

Spain: Judge Garzón abandons investigation into Franco-era crimes

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Judge Baltasar Garzón has abandoned his investigation into the executions and repression carried out by the fascist regime of General Francisco Franco after protests from right-wing politicians, the media and the Roman Catholic Church.

Garzón's actions indicate his desire to move away from what might have proved to be a political abyss for himself personally and for the Spanish bourgeoisie. He made his decision *ahead* of a meeting of the National Court called to rule on the future of the investigation. The court suspended the investigation last month after an appeal from the public prosecutor who claimed Garzón did not have the competency or authority to investigate Franco's crimes, which was "up to the courts of each region where such atrocities were committed" to carry out.

He has dutifully dropped the charges of crimes against humanity he levelled at Franco, 34 senior officers and ten top members of the fascist Falange party who were involved in the military uprising against the democratically elected Popular Front in 1936 and/or the dictatorship that followed. He has also suspended his investigation into the disappearance and deaths of the 114,266 victims of Franco's crimes discovered so far. He has also referred the cases to magistrates' courts in the provinces of Asturias, Badajoz, Burgos, Castellón, Córdoba, Granada, Huelva, Huesca, La Coruña, León, Lugo, Madrid, Navarra, Palencia, Pontevedra, Salamanca, Soria, Toledo, Zamora and Zaragoza and higher courts in Barcelona, Burgos, Madrid, Málaga, Valencia, Vizcaya and Zaragoza.

Work has stopped on the opening of 25 mass graves, including one near Granada believed to contain the remains of the poet Federico García Lorca and the underground mausoleum known as the Valley of the Fallen (the Valle de los Caídos), where Franco is still buried alongside the founder of the Falange, José Antonio Primo de Rivera.

In a 152-page report announcing his decision, Garzón makes abundantly clear that the investigation should not have been abandoned. He states that although Franco and his henchmen were no longer criminally liable because they are

dead, it was wrong "to grant them impunity, forgiveness and judicial oblivion, labelling their actions as mere political repression."

He also reminded the Socialist Workers Party (PSOE) government's Justice Minister Mariano Fernandez Bermejo that a group of experts and police was available to investigate the whereabouts of mass graves and "a proper protocol for exhumation and identification and burial of the bodies, preserving the chain of custody of human remains and other items or evidence that may be needed in the area of criminal jurisdiction" should be drafted.

The report compares the atrocities carried out by the Franco regime to the Nazi extermination programme. It refers to experiments carried out on prisoners such as those in 1938, when International Brigade members imprisoned in Burgos concentration camp and Republican women incarcerated in Malaga prison were subjected to physical and psychological torture as part of a project conceived by Franco's chief psychiatrist, Antonio Vallejo Nager, to identify the source of "Marxist fanaticism". Garzón also remind the government that some 30,960 children "whose parents were killed, imprisoned, exiled or missing" were taken away illegally for "re-education" and many of them would still be alive today.

The media has greeted Garzón's decision with undisguised glee. *La Vanguardia* said it had "closed, at least provisionally, a legal chapter that should never have been opened in the manner it was done." The newspaper said Garzón "has done great services to democracy" and shown "exemplary behaviour" in his pursuit of the Basque separatist group ETA and Islamist terrorists, but he had sparked off "an absurd debate... that leads nowhere" by raising the case of the disappeared in Spain.

The *ABC* newspaper welcomed the end of an investigation "that should never have started" and blamed Garzón "for reopening wounds healed for the vast majority of Spaniards." It said it was not for him but the National Court "to declare extinguished the criminal responsibility of those suspected of 'disappearances'."

Libertad declared, "The alleged criminal responsibility of the accused was not only extinguished by their deaths, recognised for many years before the start of the case, but because the entire investigation, through and through, so flagrantly violates the Amnesty Law, passed in 1977, and the statute of limitations for the crimes established in the Penal Code." It warned the provincial courts about the dangers of continuing the investigation saying, "Even though Franco has died, truculent 'Garzonism' remains alive."

The right-wing opposition Popular Party PP trumpeted Garzón's capitulation. Congress spokesperson, Soraya Saenz de Santamaria, said that time has shown that those had maintained Garzón was not competent to launch an investigation had been proven correct.

The PSOE's Organization secretary, Leire Pajín, refused to comment on Garzón's decision saying, "We have always respected judicial decisions and, therefore, in this case also we express deep respect for his decision and his actions."

For his part, the deputy of the Communist Party-led United Left, Gaspar Llamazares, blamed Garzón's decision on the "difficulties" and "obstacles" created by the National Court and the Attorney General's Office. However, the IU also bears responsibility for the present situation. It abandoned its campaign to nullify the sentences passed by the Franco regime and swung behind the PSOE's Historical Memory Law at the last moment last year, after settling for the amendment that described Franco's crimes as "illegitimate." At the time an IU spokesperson justified the party's about-face, saying, "We agreed to the legislation because we see the term 'illegitimate' as the door that opens the way to annulment." Garzón's decision not only reduces the chance that Franco's crimes will be designated illegitimate. It has made it virtually impossible for them to be annulled.

Joan Herrera, the deputy of the IU's sister party in Catalonia, the Initiative for Catalonia Greens (ICV), has issued a pathetic appeal to the government to create a Special Historical Memory Prosecutor to "guarantee" the rights of families of victims of Franco.

Emilio Silva of the Association for the Recovery of Historical Memory, representing the families of Franco's victims, expressed "disappointment" over Garzon's decision. "Spanish democracy had shown it was incapable of providing justice," he said.

"It's a disgrace. We have teams of Spanish peacekeepers exhuming mass graves in Bosnia and yet we can't even deal with our own graves," said José María Pedreño, president of the State Federation of Historical Memory Societies. "As a Spaniard, I find this shameful. How can we call ourselves a stable, mature democracy if we can't resolve this issue?"

Pedreño said that attempts to get regional courts to open investigations were usually futile.

The Professional Association of Magistrates appear to confirm Pedreño's concerns, saying provincial courts may refuse to deal with the "cause of the graves" claiming it lies outside their competency or jurisdiction. In Cordoba, for example, one of the cities at the forefront of the struggle to force Garzon to mount an investigation, the case involving the disappearance and subsequent execution of Arroyo Coja de Jauja in November 1936 has ended up in the Constitutional Court after being rejected by the provincial court in 2005.

The secretary of the Platform for Victims of Enforced Disappearances by Franco, Paqui Maqueda, has expressed his "surprise and sorrow" at the turn of events. He condemned the "obstructionist" attitude of the public prosecutor and the PSOE government, which, "have not have paved the way for justice to be done, and indeed, have not stopped putting obstacles."

The president of the Association of Descendants of Spanish Exiles, Ludivina García, expressed surprise at the decision made by Garzon after he had "raised so many expectations." She demanded the government explain what exactly the Law of Historical Memory is supposed to be for.

When Garzón launched his investigation last month, the *World Socialist Web Site* supported his initiative, saying Spanish workers would only be able to meet the challenges ahead by a thoroughgoing assimilation of the political lessons of the revolution and civil war. We warned that the right-wing and the PSOE government and others would do everything possible to neuter the investigation and defend the political basis of capitalist rule in Spain. That it happened so quickly is an indication of how fragile the post-Franco arrangements are despite the best efforts of the PSOE, the PP, the Communist Party and all of those who imposed the pact of forgetting and the "peaceful transition" to democracy.



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