

Spain: The collapse of the investigation into Franco-era crimes

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The investigation by Judge Baltasar Garzón into the crimes committed by the fascist regime of General Francisco Franco collapsed within weeks of its launch. Spain's National Court ruled by a 14-3 vote that he had no authority to carry out the investigation—the first attempt in Spain's history to establish a criminal case against the dictatorship. Its ruling was made in response to an appeal from the public prosecutor, who claimed Garzón was not “competent” to investigate such cases

Millions who had hoped that at long last there would be some sort of justice for Franco's victims have seen their hopes cruelly dashed. Once more, Spain's ruling elite is trying to consign the fate of the estimated 300,000 political opponents murdered by the fascists, the 500,000 people they imprisoned and the 500,000 they forced into exile to the shadows of history.

The National Court claimed that Garzón had no authority to launch an investigation because the human rights abuse laws under which he was charging the Franco regime did not exist at the time the acts were committed. It said that because the National Court itself only came into existence in 1977, following the end of the dictatorship, it had no remit to deal with charges retrospectively and that a 1977 law provided an amnesty covering “all acts of intentional policy, whatever their outcome, defined as crimes or misdemeanours committed prior to December 15, 1976.”

The court declared that regional courts were responsible for carrying out further investigations and exhuming mass graves, effectively ending any nationally co-ordinated investigation. Some regional courts have already referred their cases to the Constitutional Court, saying they do not feel qualified to assess them. The National Court ruling means that many investigations will be delayed for years or abandoned completely.

Although the decision to end the investigation normally could be challenged in the Supreme Court, the National Court has invoked regulations for controlling judges to ensure that there is no right of appeal in this case.

Even before the court made its ruling, Garzón had indicated his willingness to comply. The week before the decision he abandoned his investigation, dropped the charges of crimes against humanity against Franco and his allies and referred the exhumations back to the regional courts.

In launching his investigation, Garzón insisted that the amnesty law could not apply to crimes against humanity. In this he was supported by Amnesty International and the United Nations Human Rights Commission.

The National Court's arguments make clear that its decision was political, aimed at closing down and stifling any investigation into the horrific crimes of the Franco regime. The Spanish ruling class remains determined to use the arrangements reached in the immediate aftermath of Franco's death in 1975 to suppress any serious assessment of what happened under his dictatorship.

The National Court's decision raises once again the fundamental historical issues of the Civil War and the so-called peaceful Transition to Democracy (1975-78).

At the end of the Franco regime there was widespread anger at the crimes of the fascists and a determination to settle scores. The last years of the dictator's life were marked by rising class tensions, indicated by the 1969 State of Emergency and the escalating strike waves up to his death in 1975.

Three years later, in 1978, Spain introduced its post-Franco constitution, aimed at suppressing mass opposition to the dictatorship and establishing a bourgeois democracy. The key role during this period was played by the social democratic Socialist Workers Party of Spain (PSOE) and the Stalinist Spanish Communist Party (PCE). PCE General Secretary Santiago Carrillo reassured Juan Carlos, prince of the deposed royal family, that no one had anything to fear from the still illegal PCE, which commanded widespread support amongst workers.

Carrillo's assistance was crucial in the appointment of Juan Carlos as a “democratic” constitutional monarch late in 1975. Juan Carlos promptly formed a government of former Falangists under Carlos Arias Navarro which announced certain cosmetic changes to the Francoist regime and the implementation of an austerity programme. A massive strike wave broke out again, which Arias promised to crush. In Vitoria, police opened fire on demonstrators, killing seven.

The PSOE and PCE joined the Christian Democrats on a common platform. The PSOE was quick to endorse the new Democratic Centre Union (UCD) government under Adolfo Suárez, former general secretary of the National Movement. After the election, Carrillo met Suárez and offered him a “social pact.” In return, Suárez effectively legalised the PCE, allowing its members to stand as individuals in elections.

The PCE played a key role in politically disarming the working class and allowing the preservation of Spanish capitalism under a parliamentary regime. The PCE even opposed the PSOE's proposal that Spain should become a secular republic. Its actions allowed Franco's political heirs to regroup in the Popular Alliance, a party organised by former Francoist minister Manuel Fraga, which went on to become today's Popular Party (PP).

Carrillo argued that persecuting the Catholic Church, which had supported Franco, might turn the clergy into martyrs. In so doing, it worked to protect this reactionary institution from the hostility of the masses. The results can be seen today, where the Church has worked hand in glove with the PP to destabilise the PSOE government and undermine the Garzón investigation. It refused requests for police access to parish church archives in order to trace the disappeared.

During the transition, the PSOE and PCE prevented the working class from settling any scores and allowed the fascists to go unpunished and protected. It was they who agreed to the 1977 law granting the fascists an amnesty and a tacit “pact of forgetting” about their crimes which is now cited by the National Court.

In 1982, the election of a PSOE government under Felipe González was widely hailed as signalling the “maturity” of the new Spanish democracy. For the ruling elite it signalled, rather, the hope that the PSOE would be able to impose a pro-business agenda on the working class. But by 1996 the former Francoists of the PP, under José Maria Aznar, were able to use the PSOE’s pro-business policies to advance its own right-wing agenda of privatisation, financial speculation and attacks on social spending.

For a time European funding and a speculative financial and property boom, combined with the utilisation of public anger towards the terrorist activities of the Basque separatist ETA, concealed the social consequences of this agenda. But social and political anger took on extraordinary dimensions when in 2003 Aznar committed Spain to the invasion of Iraq in the face of opposition from the overwhelming majority of the Spanish population.

Rising hostility towards the PP erupted in the 2004 election, when it emerged that the PP had lied in accusing the ETA of responsibility for the Madrid train bombings in order to conceal the link between the bombings and Spain’s participation in the Iraq war. The PP was swept from office and the PSOE, under José Luis Rodríguez Zapatero, was brought to power.

From the outset Zapatero was acutely conscious that his government confronted a leftward movement of the Spanish working class. This was expressed in the demands for some kind of reckoning with Franco’s heirs and the growth of historical memory societies. It was the work by the societies to uncover the names of 114,266 disappeared people between 1936 and 1951 and to present them in petitions to the National Court that prompted Garzón’s investigation.

Zapatero’s government tried to appease this movement with last year’s Law of Historical Memory, but its provisions were minimal. The burden was placed on the families of victims to initiate proceedings and the law stipulated strict criteria before an investigation could be authorised.

In the 2006 debate on the Law, Zapatero characterised the Spanish Civil War as one “in which everyone was a victim.” Such language only emboldened the right wing. In Huelva, a PP-controlled council pushed ahead with bulldozing a mass grave to build houses, and in Madrid the council has been trying to speed up the demolition of Franco’s Carabanchel political prison, which campaigners wanted to convert into a museum.

Garzón had acquired a reputation as “the people’s judge” because of his association with human rights cases, like the attempt to extradite Chile’s General Pinochet. In fact, he served briefly as a PSOE senator in the

Gonzalez government and is one of the most politically astute representatives of the Spanish state. At the beginning of his investigation he said that he was not trying to open up political questions, but to conduct a “much more moderate” investigation of disappearances. Sections of the PSOE and its supporters openly described this investigation as symbolic, seeing what *El Pais* called a “virtual trial of Franco” as a useful pressure valve.

Even within such a heavily circumscribed framework, this investigation was judged to be too dangerous. The deepening political and social divisions pose too great a threat to the constitutional arrangements established with the Transition.

The Spanish state has been able to close down this investigation, but this cannot end the demands for justice nor eradicate the bitter memories of the fascist era. Rather, these can only grow as the current social and political situation worsens.

Spain has been hit hard by the credit crisis, unemployment is at its highest levels in a decade and a deepening recession is predicted for the coming period. All of the questions left unresolved from earlier periods are emerging again with renewed force.

On what basis can these questions be answered? Emilio Silva, the founder of the historical memory society movement, is correct when he says that Spanish democracy has proved itself “incapable of providing justice.” No resolution can come from any of the parties that worked so hard to rescue Spanish capitalism in 1975-8 and have defended it ever since.

The PSOE has repeatedly proven its determination to head off and neuter movements on historical questions. The PCE and the United Left (IU)—the electoral bloc set up by the Stalinists in 1986—have worked hard to draw the sting of any investigation. They dropped their call for the sentences passed by the fascists to be annulled and at the last minute supported the Historical Memory Law, which made no mention of annulment and merely labelled Franco’s crimes as “illegitimate.” When Garzón’s investigation was abandoned, the IU suggested only a legal challenge—an appeal to the very unelected forces who have now scrapped even Garzón’s limited probe.

Carrillo described Garzón’s investigation as an “error” and suggested instead a joint statement from both houses of parliament that “a revolt against a democratic state cannot be justified.” Ostensibly aimed at the Nationalist uprising of 1936, this formulation would also serve as a statement of opposition to any movement by the working class that develops in opposition to the Spanish state.

What is required is the building of an independent political movement of the working class to take forward the struggle against the legacy of Franco and the threat posed by his political heirs.



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