Spain: Judge Garzón faces prosecution for investigating Franco-era crimes

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Investigative Judge Baltasar Garzón has appeared in court as a result of a prosecution brought by far-right organisations for investigating crimes committed during the dictatorship of General Francisco Franco. Garzón, who is a candidate for president of the International Criminal Court and a Nobel Peace Prize, could be suspended or lose his job if the case proceeds.

Millions who wanted some sort of justice for the hundreds of thousands of Franco's victims were shown once again the extent of the power and influence still wielded by the extreme right 30 years after the so-called "transition to democracy."

Garzón was summoned to the National Court after judges accepted a complaint by Clean Hands (Manos Limpias) and Liberty and Identity (Libertad e Identidad) that Garzón exceeded his legal powers in 2008 when he charged Franco and 34 former generals and ministers with crimes against humanity and ordered the exhumation of the disappeared buried in mass graves. In its complaint, Clean Hands accused Garzón of ignoring the amnesty granted to Franco and his henchmen in 1977 during the transition.

He spent four hours in the court, where he stated it was his duty "to investigate the facts, to ferret out responsibility for the protection of the victims." He argued that the disappearances could not be pardoned since they constituted crimes against humanity.

A spokesman for the Association for the Recovery of Historical Memory, which has been in the forefront of the campaign to identify the disappeared, said the prosecution was "grossly unjust."

"It is incomprehensible that an attempt to seek justice for victims of rights violations as serious as those committed by the Franco dictatorship can be considered a crime."

"For victims of Franco," he concluded, "it is a humiliation to see that the judge who tried to find thousands of the disappeared in mass graves could be convicted for it."

The International Commission of Jurists called for the charges against Garzón to be dismissed, saying international law prohibits the prosecution of judges "for controversial or even unjust or incorrect decisions." The Commission said that the attempt to interfere in the judicial process was of "particular concern" since it involved an investigation into crimes against humanity, which Spain had a duty to investigate and prosecute. Amnesties for such crimes are invalidated by European human rights laws, it added.

Clean Hands General Secretary Miguel Bernard said the prosecution was "the first step for the processing of the superstar Baltasar Garzón who believed himself above the law."

The organisation's Web site is more menacing, comparing Garzón to "a malignant tumour within the judiciary" that has to be removed. It boasts that since 1997 it has brought 18 complaints against Garzón, all of them unsuccessful.

Bernard is an unashamed admirer of Blas Piñar, a deputy in the Francoist "parliament" and a key player in the National Movement (Movimiento Nacional), the ideological centre of fascism. Piñar was one of the most intransigent opponents of the break-up of the dictatorship and the subsequent transition, during which his New Force (Fuerza Nueva) became notorious for its attacks on strikers, leftists, trade unionists and demonstrators. Bernard has praised the "important" role played by Piñar and his organisation during this period saying, "Had there been no such opposition, call it violent, perhaps the transition would have happened differently."

Elsewhere Bernard has said of Spanish fascism, "We respect that history: we condemn Nazism, but not Francoism."

Bernard founded Clean Hands in1995 after his political party Spanish Right (Derecha Española) disintegrated. Piñar's National Front, successor party to New Force, collapsed at the same time after it received derisory electoral votes and suffered huge financial losses. Many members found refuge in the Popular Party created in 1989 by the veteran Francoist Manuel Fraga. The PP, led by Fraga's protégé José María Aznar, went on to win the election in 1996 benefiting from the huge opposition to 15 years of

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Felipe González's Socialist Party (PSOE) government, which had alienated its own support by introducing free-market policies and attacked working class living standards.

Clean Hands describes itself as a civil servants' union and claims to combat "all forms of corruption, economic and political damage to the public or general interest." In practice it directs its attention to lodging legal complaints against striking workers, "rebel" priests, Catalan and Basque nationalists, and homosexuals. Clean Hands regards its greatest "success" as the disqualification of Basque members of parliament for refusing to obey the National Court's order in 2008 to dissolve the Sozialista Abertzaleak parliamentary group, which was accused of links to the Basque terrorist organization, ETA.

The ability of Clean Hands to mount its prosecution despite numbering a paltry 6,500 members attests fundamentally to the role played by the PSOE in safeguarding the interests of the Spanish ruling class. From the day José Luis Zapatero and his party were swept to power in 2004, they were acutely aware that their new administration confronted a leftward movement of the working class. This was expressed in the demands for a reckoning with Franco's heirs and the growth of historical memory societies. It was the determination shown by the societies to uncover the names of over 100,000 disappeared people and to present them in petitions to the National Court that prompted Garzón's investigation.

Zapatero's government tried to appease this movement with a Law of Historical Memory, but its minimal provisions meant investigations could only be authorised after families of the disappeared had met strict criteria. In the 2006 debate on the law, Zapatero characterised the Spanish Civil War as one "in which everyone was a victim." This means for the first time this year there will be the spectacle of a state-sponsored mass at Franco's Valley of the Fallen outside Madrid on November 3 in memory of *all* those who died in the Civil War and in place of the November 20 service that became the venue for far-right celebrations of the anniversary of the dictator's death.

When Garzón started his investigation last October, sections of the PSOE and its supporters called it "symbolic" and a "virtual trial of Franco." They believed that it would serve as a useful safety valve to let off popular anger. Garzón himself said that he was not trying to open up political questions, but to conduct a "much more moderate" investigation of disappearances.

However, in November 2008 the PSOE government's top legal officer, Attorney General Cándido Conde-Pumpido, condemned the investigation. His intervention followed outbursts by the PP and the Catholic Church criticizing Garzón for reopening "wounds from the past."

Garzón dropped the case and handed responsibility for the excavation of the mass graves to regional courts.

These actions only emboldened the right wing. Justice Minister Mariano Fernández Bermejo was forced to resign after claims that he used a hunting trip with Garzón to try and influence an investigation into members of the PP. In June, the National Court investigated—but cleared—Garzón of charges, after complaints that he failed to declare pay he received from a US university during a 2005-6 sabbatical.

In a further show of its weakness the PSOE—under pressure from the US administration, Israel and China and the Spanish right—introduced legislation, approved almost unanimously by parliament, aimed at "ending the practice of letting its magistrates seek war-crime indictments against officials from any foreign country, including the United States."

Garzón had made his name invoking the principle of "universal jurisdiction" to pursue the likes of former Chilean military ruler General Augusto Pinochet, Italian prime minister Silvio Berlusconi and most recently contemplating the indictment of former Bush administration officials, including the former president, over allegations of torture at Guantánamo Bay and other US prison camps.

The prosecution of Garzón is not simply a matter of the intimidation of an individual. The case shows that Spain's ruling elite is determined 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.

When Garzón launched his investigation, it soon became clear that the right wing would do everything necessary to defend the political basis of capitalist rule in Spain and that the government was fully behind them in this mission. Even so, 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 must continue to unravel as political and economic conflicts within Spain deepen.

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