

UN Human Rights Committee announces the admissibility of the Garzón v Spain case

1. On 4 February 2020, the United Nations Human Rights Committee (UNHRC) informed Human Rights in Practice (HRiP) of a significant decision in the case lodged on behalf of Baltasar Garzón against Spain. The Committee has found the complaint by the former judge of the Spanish National Court (Audiencia Nacional) admissible and that the Spanish government now has six months to respond to the substance of his case.
2. The complaint, which was filed on 31 January 2016, concerns the criminal investigation and prosecution of the Spanish judge for his interpretation and application of the law. During 2009 and 2012 Judge Garzón was investigated and prosecuted for ‘prevarication’ or criminal malfeasance in respect of his judicial decisions in two cases allocated to him by Spain’s National Court. The first related to his decision to open an investigation into crimes against humanity of the Franco regime and his determination that the amnesty law did not apply to such crimes (the ‘Franco case’), and the second to his investigation of alleged high level corruption by persons associated within the (then) governing political party, the *Partido Popular* and others (‘Gürtel case’). Judge Garzón was eventually acquitted in the Franco case, but just 18 days after being convicted - and banned from judicial office for 11 years - in the Gürtel case.
3. Baltasar Garzón’s complaint against Spain before the UNHRC signals a flagrant attack on judicial independence and violations of his rights under the International Covenant of Civil and Political rights (ICCPR) ratified by Spain. At its October 2019 session, the Human Rights Committee considered the arguments made by HRiP alongside the government’s request to dismiss the case and not proceed to consideration of its merits.
4. The Committee decided that the communication was admissible, and the government should respond to the substance of the allegations, in relation to the following issues:
 - a. the applicant’s conviction on the basis of an unforeseeable interpretation of the crime of ‘prevarication’ in the Gürtel Case, based on Article 15 of the International Covenant on Civil and Political Rights (‘ICCPR’) enshrining the principle of legality and certainty in criminal law;
 - b. the lack of fair trial in both the Franco and Gürtel cases:
 - i. the arbitrariness of criminal proceedings through the lack of impartiality of the judges who convicted him in the Gürtel Case, and the non-disqualification of four of the judges in the Franco Case (decided by the judges themselves), under Articles 14(1) of the Covenant;
 - ii. the lack of any right of appeal under Spanish law under 14(5).
5. The decision is an important step forward towards accountability for interference with judicial independence at a time when it is under serious attack in Spain and beyond.

Background:

1. The UN Human Rights Committee is the body charged with giving effect to the ICCPR, including by determining individual complaints concerning violations of the ICCPR. The ICCPR is binding on Spain which ratified it on 20 April 1977. Spain accepted the Committee's competence to hear individual cases on 25 January 1985.
2. Baltasar Garzón is represented in these proceedings by Helen Duffy of Human Rights in Practice (helen@rightsinpractice.org). More information can be found at: <https://www.rightsinpractice.org/judicial-indipendence>.
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