

# Mass graves, restorative justice and democratic transition in Spain

## Opinion

At present, the Spanish State is the second country in the world, only surpassed by Cambodia, with more mass graves containing victims disappeared. It is estimated at 140,000 the number of missing victims of the Spanish civil war and the subsequent Franco dictatorship whose bodies have neither been recovered nor identified. In 2008, the judge Baltasar Garzón received a list with the names of 143,353 missing in the Civil War and dictatorship, delivered by the Platform for Victims of Enforced Disappearances by the Franco regime. Judge Garzón contribuyó decisively to the implementation and international humanitarian protection of the way when considered competent by the Spanish jurisdiction to prosecute crimes of genocide, torture and terrorism committed in Chile, in the famous "Pinochet case" and the extradition request to the United States he asked pursued in Spain.

Garzón también consideró the competent Spanish court to try the Argentine officials in the cases of genocide, on the Spanish citizens during Argentina disappearance dictatorship from 1976 to 1983. In this context, the April 19, 2005, the Court sentenced to 640 years in prison Adolfo Scilingo. In October 2008, Garzón accepted the jurisdiction of the High Court to review cases of illegal detention, crimes against humanity and disappearances recorded during the Civil War and the early years of the dictatorship of Francisco Franco. The resolution also ordered the opening of 19 mass graves dispersing Spain. The decision was appealed by the Attorney General of the National Court. In November 2008, a higher court, Criminal Division of the National Court declared itself incompetent to judge incompetent to hear the case Garzón. On April 7, 2010, the Supreme Court suspended its judicial functions Judge Garzón. The suspension of the judge sparked political protests in Spain against the impunity of the Franco regime. In this regard, Human Rights Watch denounced the double standard of the Spanish justice to judge crimes in Chile and Argentina, and suspending Judge Garzón by querer hacer the same in Spain. The Annual Report 2011 Amnesty International condemns the charges against Baltasar Garzón saying it was the only judge tried to judge the universal crimes against humanity, and finally separated from his functions. After his judicial expulsion, Baltasar Garzón was an advisor to the International Court of Justice in The Hague, and is now a lawyer.

On December 14, 2006, 22 criminal cases were filed in the Courts of Central Instruction (National Court) to press charges against Francisco Franco, political and military leaders of the regime for crimes against humanity committed during the Spanish Civil War (1936-1939) and postwar years. In the admission of the claim Garzón affirms the existence of a preconceived plan of systematic and permanent elimination of political opponents through killings, torture,

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exile and forced disappearances. Attorney General (Prosecutor) said that the High Court had no jurisdiction to these actions, because the facts reported could not be considered as crimes against humanity or genocide, being made subject to the law 46/1977 of 15 October 1977 amnesty law. A pre-constitutional law endpoint approved by the pre-democratic courts.

The Historical Memory Law, Law 52/2007 which recognizes and extends rights and measures in favor of victims of persecution or violence during the Spanish Civil War and the subsequent dictatorship, execution and implementation of such approved while in 2007, standard has been more than enough. Proof of this is that Spanish citizens have had to seek international assistance in Mexico, Chile, Argentina to exhume the bodies of their relatives.

The Spanish political transition has been used as an example and role model by many authors, but the transition was cemented without a commission of truth and reconciliation be established, without clarifying responsibilities on the most heinous crimes and nonjudgmental no blame for such acts of humanity. Puede against a constitutional democracy founded on oblivion and no forgiveness? It is not mature Spanish society to address these issues? The problem is that not just those who have to answer these questions have often been participants, beneficiaries and heirs of the Franco regime, but also lack the dignity and the values of democracy and the rule of law requires. Ten years after the expulsion of Judge Garzón of judicial career, and decades after fear and injustice, victims of Franco's repression still unable to bury their loved ones.

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## Conflicts of interest

None.