The Spanish Civil War came to an end 73 years ago and is ancient history for most of the world. In Spain itself, ongoing and bitter memory wars mean that it is still ‘the past that has not passed away’. The war is still being fought in books and in political actions and the latest victory has gone to the right with the trial and condemnation of the judge, Baltasar Garzón, internationally renowned for his championing of human rights and most notably for his bid to have the Chilean dictator, General Augusto Pinochet, extradited from Britain to be tried for the execution of some three thousand leftists between 1973 and 1990.

The Garzón case is immensely complicated. He was charged with three separate offences all of which related to his role as a juez instructor – an investigating magistrate – that is to say a judge with police powers. One related to the fact that he had accepted a visiting professorship at New York University to lecture on human rights in 2005-2006. The post was partially financed by a grant from the cultural foundation linked to the Banco Santander at the same time as he was acting in a case involving another part of the bank. A complaint was filed charging that Garzón had accepted payment which came indirectly from the bank in return for dropping a tax fraud investigation against the bank’s owner. The case was eventually dropped on the grounds that the judicial reasons for dropping the fraud investigation were sound.

The second set of charges against Garzón related to the corruption investigation known as the Gürtel case. The case implicated a number of leading members of Spain’s ruling Partido Popular, especially those from the Valencian region. Garzón was tried for ordering in early 2009 illegal wiretaps of conversations between the accused and their lawyers. He claimed in his defence that his actions were approved by State prosecutors because he ordered the wiretaps on suspicion that suspects in the case were involved in money laundering. The Spanish Supreme Court found him guilty and suspended him for 11 years, effectively ending his career, on the grounds that he had violated the fundamental rights of defence.

It is widely believed in Spain that what brought down upon Garzón the wrath of a pro-Franco judiciary was mainly his attempt to investigate the crimes of the Francoist military rebels who, between 1936 and 1945, were guilty of fifty times the number of killings attributed to Pinochet. For this he was accused of ‘prevaricación’, an offence which has nothing to do with the English word prevarication meaning evasion or hesitation but means rather knowingly pursuing a judicial or administrative action knowing it to be contrary to the law. In this case, in the wake of the so-called law of Historical Memory of 2007, Garzón had initiated an investigation into the crimes of the military rebels and their allies. As an investigating magistrate, he was entitled to open investigations into suspected offences which could lead to criminal prosecution. However, in this case, there was no possibility of any such prosecution.

This was because of the existence of the law of political amnesty passed on 15th October 1977, one of the pillars of Spain’s bloodless transition to democracy. The law effectively stated that acts of terrorism in opposition to the Franco dictatorship and crimes against human rights in its defence could not be subject to judicial proceedings. This was the basis of what is often called ‘the pact of silence’. Essentially, it was an agreement not to rake up the past which, given the numerical discrepancy between the relatively few people involved in acts of violence against the Franco regime and the many involved in its brutal defence, constitute a major sacrifice made by the democratic forces in order to avoid bloodshed.

There is little doubt that Garzón had made himself unpopular within the overwhelmingly conservative judiciary in part because he was perceived as a celebrity-seeking self-publicist. However, the three cases amount to a vendetta that went far beyond personal issues. The investigation into the corruption involving the Partido Popular made powerful enemies but it is popularly believed that the real clincher against Garzón was the branding of General Franco and his collaborators as murderers. The fact that he was acquitted of the charges of ‘prevaricación’ in this third case has been seen as a sign of cunning on the part of his right-wing enemies. The charges began with a private prosecution brought by two extreme ultra-rightist groups. That they were allowed to go forward caused public outrage. Garzón’s acquittal on the charges is seen as a whitewash.
Garzón: from Spanish judge to anti-fascist hero.

For his efforts, and in response to his being condemned to be stripped of his position as a judge, Garzón has become a hero to millions of Spaniards. They are the descendants of the nearly one hundred and fifty thousand men and women supporters of the democratically elected Second Republic who were murdered extra-judicially or executed after flimsy legal process. In the rebel zone, unknown numbers of men, women and children were killed in bombing attacks and in the exoduses that followed the occupation of territory by Franco’s military forces. In all of Spain after the final victory of the rebels at the end of March 1939, approximately twenty thousand Republicans were executed. Many more died of disease and malnutrition in overcrowded, unhygienic prisons and concentration camps. Others died in the slave labour conditions of work battalions. More than half a million refugees were forced into exile and many were to die of disease in French concentration camps. Several thousand were worked to death in Nazi camps. All of this is what Garzón wanted to investigate and it constitutes what I believe can legitimately be called the Spanish Holocaust.

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