SPAIN[1]

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Cases — Western Sahara

☛ National Court. Preliminary Proceedings 1/2008-A. Central Investigating Court No. 5. Order of 16 August 2012

In December 2007, the Sahrawi Association for the Defence of Human Rights ('ASADEH') filed an action against 24 leaders of the Polisario Front and three Algerian army officers on the grounds of genocide, torture and disappearances.[2] On 20 December 2007, the examining Magistrate began preliminary investigations into the case. On 5 June 2009,[3] the Magistrate decided to grant leave to proceed with the action, and to issue letters rogatory to Morocco and Algeria to determine whether these facts were being investigated in either of the two countries. After confirming the absence of such proceedings, in his ruling of 16 August 2012, the Magistrate admitted the action filed by the ASADEH and some of the injured parties. According to the Magistrate, the factual account in the action filed provided at least circumstantial evidence of the presumed commission of a crime of genocide, in concurrence with crimes of murder, injury, illegal detention, terrorism, torture and disappearances.

Cases — Guantánamo Bay

☛ National Court. Criminal Chamber. Third Section. Order of 23 March 2012. Proceedings 14/2011. Appeal No. 0148/2011. Central Investigating Court No. 6

[1] Information and commentaries by Antoni Pigrau, Professor of Public International Law at the Rovira i Virgili University, Tarragona, Spain.
[2] The individuals concerned are Sidahmed Battal, Sidi Wagag, El Jalil Ahmed, Brahim Ghali, Jandoud Mohamed, Abdelwodoud El Feri, Mohamed Salem Sanoussi ('Salazar'), Taleb Haidar, Brahim Beidila, Mahjoub ('Lincoln'), Mohamed Lamine Buhali, Edda Hmoim, Ahmedu Bad, Ali Dabba, Bachir Moustafa Sabed, Mohamed Jadad, Ahmed Salama, Molud Lehsen, Mohamed Hnya ('Derbali'), Mohamed Ali Hnya ('Degaulle'), Luchaa Obeid, Molud Didi, Mahfoud Hmeina Duihi ('Ali Beiba'), Mohamed Fadeln ('Japonés'), General Omari, Nabil Kadour, Nadim Benaser, Mahfoud and Abderraman Buho ('Michel').
[3] See 12 *YIHL* (2009) pp. 624–625.

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On 17 March 2009,[4] a class action was filed by the Spanish Association for the Dignity of Prisoners against the architects of the United States detention policy at the Guantánamo Bay detention centre: William Haynes, General Counsel of the Department of Defense; Jay Bybee and John Yoo, legal advisors to the Department of Justice; Alberto Gonzales, General Counsel to President Bush; David Addington, legal counsel to Vice-President Dick Cheney; and Douglas Feith, Undersecretary of Defense for Policy. On 4 May 2009, Central Court No. 6 of the Spanish High Court issued a letter rogatory to the US asking whether 'the facts referred to in the action are being investigated or prosecuted,' in order to apply the criterion of subsidiarity of Spanish jurisdiction where appropriate. The response from the US Department of Justice, received in 2011, stated that an effective investigation of the case was being undertaken.

As a result, in April 2011, the Magistrate decided not to grant leave to proceed with the action. The Magistrate found that none of the links required by the new wording of Article 23.4 of the *Organic Law of the Judicial Power* were applicable.[5]

On 10 May 2011, the Magistrate upheld the decision against an appeal for amendment filed by the plaintiff. In the Court's opinion, which gravely overstates the importance of the few cases contributed by the Director of the Criminal Division of the Office of International Affairs of the US Department of Justice dated 1 March 2011, almost two years after they were requested: 'there is not the slightest doubt that the competent authorities in the United States have conducted a series of legal investigations and proceedings focusing on the facts reported here' and 'there have been convictions with criminal penalties in various cases.' The Court continued:

> It is therefore impossible to conclude that in this case there has been a dereliction by the competent country in the investigation and prosecution of the facts contained in the action and its result, which moreover requests that the proceedings be referred in order to be conducted in that country. The investigation and criminal proceedings regarding the facts are therefore real and effective, in accordance with the law in force in the country in which they are taking place, which is the only one applicable.

However, three of the seventeen Magistrates issued dissenting votes on the basis that there was no 'prior or simultaneous investigation taking place in the State in which the acts were committed that may be considered adequate and effective, or the desire for a criminal prosecution or trial thereof.' In the opinion of these Magistrates, subsidiarity is not applicable in cases of war crimes, and this subsidiarity does not exist because real investigations of the same facts have not been carried out in the US:

> This Court should not endorse the results of a political decision by the United States government not to pursue any of the defendants in this case as an exercise of independent and impartial jurisdiction. No criminal investigation conducted by an independent authority has ever taken place, in which possible criminal liability would have been clearly established, even if this had concluded with a decision to close the case. We are instead confronted with a political decision that is restricting to making the unwillingness to prosecute clear. This State is unwilling to carry out the prosecution, a situation referred to in Article 17.1-b of the Statute of the International Criminal Court, or to investigate in situations like this one.

In the opinion of the dissenting Magistrates:

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[4] See 12 *YIHL* (2009) pp. 623–624.
[5] *Ibid*., pp. 628–632; 14 *YIHL* (2011) pp. 4–5.

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> The documentation obtained as a result of the request for legal cooperation from the United States demonstrates a total lack of a willingness to prosecute the defendants for the acts listed in the action, and a willingness to justify their behaviour. This usually occurs when the jurisdiction concerned is that of the State possessing the power apparatus within which the crimes were committed, as they are state crimes.
>
> The exercise of a jurisdiction that only appears to prevent effective prosecution in another State willing to undertake the prosecution is apparent from an indisputable fact: over ten years after it was established, the Guantanamo detention centre on the island of Cuba remains beyond the bounds of international law, housing detainees with pariah status, subject to the authority of the US, with no right of due process, guarantee of freedom, right to a defence, or access to any other basic human rights, which they are systematically denied. There is also no other jurisdiction — Spanish or international — that is willing or able to deal with the victims. These acts thus have total impunity.
>
> There is therefore no impediment to the exercise of the jurisdiction in Spain under the principle of universal jurisdiction, as these are international crimes of the most serious nature, which in this case have been committed against persons and property who are protected in the event of armed conflict. The proceedings that should have been initiated in our jurisdiction were not concurrent with any investigation or prosecution of the same facts or the same people, simply because they do not exist.

Unfortunately, this is another example not only of the negative impact of the restriction introduced by *Organic Law 1/2009* on the exercise of the universal jurisdiction by Spanish courts[6] but also of the restrictive interpretation that Spanish courts make of it, by giving precedence to considerations of political interest or opportunity rather than important international commitments such as preventing impunity for international crimes.

Cases — Ex-prisoners at Guantánamo under Investigation in Spain

☛ National Court. Preliminary Proceedings 150/2009-P. Central Investigating Court No. 5. Order of 13 January 2012

On 27 April 2009, Central Court No. 5 of the Spanish High Court opened preliminary investigation proceedings in connection with the action relating to torture brought by four people who had been detained at Guantánamo Bay. They were imprisoned in Spain in connection with investigations related to terrorism, against George W. Bush, former president of the US, Dick Cheney, former vice-president of the US, Donald Rumsfeld, former US Secretary of Defense, General Michael Lehner, former commander of the Guantánamo military base, and General Geoffrey Miller, head of the joint detention and intelligence operations in Guantánamo.

Those responsible as the material or intellectual perpetrators of these acts included members

> of the United States Army and military intelligence and all those who executed and/or designed a systematic plan for the torture or ill-treatment, inhuman and degrading treatment of prisoners their custody who were captured during the armed conflict in Afghanistan and who were accused of terrorism.

Since 2009, these acts have been provisionally classified legally as war crimes, crimes against humanity and torture, as stipulated in articles 608, 609 and 611, 3 *in fine* and 7, in relation to Articles 607 bis 1, 8 and 173 of the *Spanish Penal Code*, the *Geneva Convention on the Treatment of Prisoners of War and the Protection of Civilians*, the *Convention against*

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[6] See 12 *YIHL* (2009) pp. 628–632.

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Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

In May 2009, the Magistrate agreed to issue an international letter rogatory to the judicial authorities in the United Kingdom to ascertain whether any criminal investigation was in progress to determine the alleged torture, inhuman and degrading treatment suffered by Jamiel Abdul Latif al Banna and Omar Deghayes during their detention at the military base at Guantánamo Bay until they were handed over to the British authorities. The Magistrate also produced another international letter rogatory to US judicial authorities to ascertain whether there was any judicial investigation in progress regarding the allegations of the torture, ill-treatment, inhuman and degrading treatment of the Spanish citizen Hamed Abderrahman Ahmed, the Palestinian citizen Jamiel Abdul Latif al Banna, the Libyan citizen Omar Deghayes and the Moroccan national Ikasrrien Lahcen, the holder of a residency permit in Spain. The letter also sought responses as to whether it was legally possible for the victims to apply for this investigation to take place.

As no response to these requests had been received by 29 October 2009, the Magistrate decided to dismiss the action filed against the leaders of the US mentioned in it, as the facts attributed to them had not been specified. The Magistrate reaffirmed the letters rogatory sent to the UK and the US.

On 27 January 2010 the Magistrate agreed to ratify 'the competence of Spanish jurisdiction in this case,' and declared admissible the actions filed by the counsel for the Spanish Association for the Dignity of Prisoners and the action by the counsel for the Association of Free Lawyers (ALA), Izquierda Unida (IU) and the Spanish Pro Human Rights Association (APHDE).

On 13 January 2012, the Magistrate reaffirmed its competence and the letters rogatory sent to other States, and agreed to a medical examination of two of the alleged victims of torture, Lahcen Ikassrien and Hamed Abderrahman Ahmed.

Cases — The Carmelo Soria Case

- National Court. Proceedings 19/1997-D. Central Investigating Court No. 5. Order of 29 October 2012

On 14 July 1976, agents of the National Intelligence Directorate (DINA), the secret police of Augusto Pinochet's dictatorship in Chile, kidnapped, tortured and murdered the Spanish citizen Carmelo Soria Espinoza, who was working in Chile as a diplomat for the United Nations in the Economic Commission for Latin America and the Caribbean (ECLAC).

At the request of the victim's relatives, Pablo Ruz, Magistrate of the Spanish High Court prosecuted seven agents of DINA for the crimes of genocide and murder and issued international arrest warrants for their imprisonment. In the opinion of the Magistrate, the crime of genocide may have occurred because the murder of Soria was perpetrated as part of the 'process of systematic repression and elimination of opponents of the military regime' undertaken by Pinochet.

The fugitives, who were all past members of the Mulchen Brigade of the DINA, are Juan Guillermo Contreras Sepúlveda, José Remigio Ríos San Martín, Jaime Lepe Orellana, Guillermo Humberto Salinas Torres, Pablo Blemar Labbe and Patricio Quilhot, all Chilean nationals, as well as the US national Michael Vernon Townley, who was also an employee of DINA.

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The seven men are accused of involvement in the kidnapping and torture of the diplomat, whose ribs were almost all broken and who was injected and then forced him to drink pisco (grape brandy) in order to kill him. The ultimate cause of death was strangulation.

The Spanish High Court found itself competent to undertake investigations on the basis of the principle of universal jurisdiction. Even though this was an alleged crime of genocide taking place outside Spain, there was nevertheless the requisite link to Spain because one of the victims was Spanish.

The Chilean Supreme Court investigating the case closed it on 23 August 1996, in application of the amnesty established in Decree Law 2191 of 1978.

The Magistrate made a subtle criticism of the principle of subsidiarity stipulated in the restrictive reform of the universal jurisdiction in Spain in 2009

> against the principle of concurrent jurisdictions enshrined in international law as a mechanism to prevent impunity for the most serious crimes under international law. In view of the victim's Spanish nationality, which is one of the limits now required by Spanish law, the Magistrate refers to the dissenting votes issued by Magistrates in the Spanish High Court in the case of Guantanamo (see above) and states that 'the only limitation on Spanish jurisdiction is determined by the principle of bis in idem or res judicata, and if any other preferential jurisdiction is recognized, as a result of a de facto positive conflict arising between them … this must be resolved according to the criteria of effective prosecution, considered according to standards that are strict and in the best position for the prosecution and trial.

Since its amendment in 2009, Article 23.4 of the *Organic Law of the Judiciary* states that for Spanish courts to be inhibited, there must be 'a process that involves an investigation and an effective prosecution, where appropriate, of these offences'. In the Magistrate's opinion, this meant that the existence of criminal proceedings is necessary.

The Magistrate concluded that in this particular case, there had been no truly effective investigation and prosecution of the facts by the Chilean judicial authorities due to the application of the Decree that was 'a material act of self-amnesty by the Chilean military dictatorship,' constituting an 'obstacle making the effective prosecution of the crime where it took place impossible.'

Cases — The El Salvador 'Jesuit Massacre'

☛ National Court. Preliminary Proceedings 97/10 (DP 391/08). Central Investigating Court No. 6. Order of 30 May 2011

On 13 November 2008, an action was brought before the Spanish National Court for the murder of six Jesuit priests and two other people on 16 November 1989 at the Central American University in San Salvador.[7]

On 30 May 2011, in order to bring to trial those allegedly to blame for the commission of crimes against humanity, terrorism and murder in El Salvador, the Magistrate presiding over the Central Investigating Court of National Court No. 6, Eloy Velasco, issued an international arrest warrant against twenty people of Salvadoran nationality.

Subsequently, on 9 November 2011, the Council of Ministers took the formal decision to apply for the extradition of fifteen soldiers accused of murder. The application covered the extradition of thirteen soldiers to El Salvador and two to the US.

On 8 May 2012, the Supreme Court of El Salvador refused to extradite the Salvadoran army officers implicated and prosecuted by the Spanish National Court to Spain by nine votes

[7] See 11 *YIHL* (2008) pp. 557–558; 12 *YIHL* (2009) pp. 625–626; 14 *YIHL* (2011) pp. 7–8.

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to three, while a further three Magistrates abstained. The decision was based on the facts occurring on a date prior to the reform of Article 28 of the Constitution in 2000. Before the amendment to the wording of this article, the extradition of Salvadorans was not permitted under any circumstances.

One of the defendants, who resided in the US, Inocente Orlando Montano, the ex-viceminister of Security in El Salvador (1989–1992), pleaded guilty to violating US immigration law in September 2012, and is being tried in Massachusetts. A report prepared by the Stanford University researcher Terry Lynn Karl dated 31 December 2012 links Montano to 65 summary executions, 51 enforced disappearances, 520 cases of torture and 533 cases of arbitrary detention.

Cases — Trial of Judge Baltasar Garzón

☛ Supreme Court. Criminal Chamber, Third Section. Special Proceeding No.: 20048/2009. Ruling: 27/02/2012. Ruling No. 101/2012

The origin of these criminal proceedings lies in an action filed by *Manos limpias* (Clean Hands) association against Judge Baltasar Garzón for an alleged crime of perverting the course of justice due to his investigation relating to people who disappeared during the Spanish Civil War and the subsequent dictatorship.[8] On 26 May 2009, the Second Chamber of the Spanish Supreme Court upheld its jurisdiction over the investigation and prosecution of this case. On 15 June 2009, it dismissed the Judge's appeal, contrary to the opinion of the prosecution, which was in favour of declaring the action inadmissible.

On 7 April 2010, the investigating Magistrate agreed to continue with the case. On 11 May, the Magistrate agreed to begin the trial of the accused, for whom the prosecution demanded a sentence of a fine exceeding EUR 20,000 and disqualification from acting as a Magistrate for 20 years. The trial took place between 24 January and 8 February 2012.

The ruling acquitted Judge Baltasar Garzón of the offence of perverting the course of justice. In order to prove the accused was guilty of perverting the course of justice, the prosecution was required to show that the judicial decision was contrary to the law and was not explained with sufficient and reasonable legal argument. In the Court's opinion, although the Judge's line of argument was erroneous, 'it is maintained by some jurists in their reports and in some resolutions by organizations monitoring human rights'. The Court added that 'international law for the protection of human rights, which is subject to constant discussion, is creating important legal debates that at present prevent a categorical ruling on its scope.' Consequently, according to the ruling,

> despite an excessive application and interpretation of the laws, the court proceedings of the accused Magistrate, which have been duly remedied by judicial channels, do not meet the criteria for the perversion of the course of justice, and do not warrant the criticism of arbitrariness required if the crime of perversion of the course of justice in the indictment did in fact take place.

Despite this positive decision, the ruling has other less positive effects. In particular, the Supreme Court's interpretation appears to end any possibility of a Spanish court investigating the crimes mentioned. Among the most controversial aspects of the decision are those relating to forced disappearances and the legitimacy of the Spanish amnesty law of 1977.

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[8] *Spanish Criminal Code 1995*, art. 404: 'The authority or public officer who, being aware of the injustice thereof, were to hand down an arbitrary resolution in an administrative matter, shall be penalised with the punishment of special barring from public employment and office for a term of seven to ten years.' See 11 *YIHL* (2008) pp. 549–556.

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As regards enforced disappearances, the Court did not accept that these continuing offences ('the argument regarding the permanence of the offence is a fiction contrary to legal logic'). As such the Court considered that the offences are prescribed, as they cannot be considered crimes against humanity due to the non-existence of this category of crimes at the time the facts occurred.

The Court considered that the 1977 amnesty law was fully applicable and stated that in any case, international commitments relating to the protection of human rights only affect violations committed after the entry into force in Spain of the *International Covenant on Civil and Political Rights* in 1977.

The ruling by the Spanish Supreme Court highlights an extremely narrow interpretation of the validity of international law in Spain. Spain's positions are diametrically opposed to those held, among other international bodies, by the European Court of Human Rights,[9] the Working Group on Enforced or Involuntary Disappearances[10] and the Human Rights Committee,[11] regarding the nature of enforced disappearance, with laws providing an amnesty for the most serious international crimes, and the obligations of States to open investigations into those crimes to comply with rights to ascertain the truth, to obtain justice and where appropriate, to receive redress.

Various human rights organizations were present during the trial as observers including the International Commission of Jurists (ICJ), the Center for Constitutional Rights (CCR), the European Center for Constitutional and Human Rights (ECCHR), Lawyers Rights Watch Canada (LRWC), the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), Asociación pro Derechos Humanos de España (APDHE), Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH) and the Due Process of Law Foundation (DPLF) and Rights International Spain (RIS). These bodies made a joint statement in response to the Supreme Court's decision.

In their statement, these organizations welcomed the acquittal of Judge Baltasar Garzón. However, but, inter alia, they pointed out that:

> The critical question that motivated the prosecution of Judge Garzón has not been adequately answered: who has the legal authority to investigate crimes committed during the Spanish Civil War and under the Franco regime?
>
> … Our organizations call on the Supreme Court to consider and determine, in accordance with its constitutional mandate and principles of international law, which courts have the authority to investigate and provide effective remedy for the 114,266 enforced disappearances and extra-judicial killings committed during the Civil War and the Franco regime that followed it. We also call on the Court to confirm the applicability of Spanish

[9] *Abdülsamet Yaman v Turkey*, European Court of Human Rights, Second Section, Application No. 32446/96, Judgment, 2 November 2004;*Ould Dah v France*, European Court of Human Rights, Fifht Section, Application No. 13113/03, Decision on Admissibility, 30 March 2009; *Varnava And Others v Turkey*, European Court of Human Rights, Grand Chamber, Applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009.

[10] Working Group on Enforced or Involuntary Disappearances, 'General Comment on Enforced Disappearance as a Continuous Crime', UN Doc. A/HRC/16/48, 26 January 2011, available from <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>; Working Group on Enforced or Involuntary Disappearances, 'General Comment on the Right to the Truth in Relation to Enforced Disappearances', UN Doc. A/HRC/16/48, 26 January 2011, available from <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>.

[11] Human Rights Committee. *Concluding Observations of the Human Rights Committee: Spain*, UN Doc. CCPR/C/ESP/CO/5, 5 January 2009. See 12 *YIHL* (2009) pp. 638–640.

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> and international law for the investigation and redress of these and other serious crimes against international law.
>
> With the Office of the High Commissioner for Human Rights and the United Nations Human Rights Committee, we call on Spain to repeal its 1977 Amnesty Law as it violates the obligations under international law that Spain has assumed since that year, and the Spanish Constitution itself (articles 1.1, 9, 10.2, 95 and 96). Our organizations also urge the Spanish authorities to comply with their international obligations and take effective measures to ensure accountability for enforced disappearances, extra-judicial killings and other serious crimes under international law that threaten our collective peace and security. In accordance with international law, they must act to secure truth, justice, and reparation for the victims of crimes committed during the Civil War and the Franco regime.

Treaty Action — Taking of Hostages

- Spanish Objection to the Declaration by Singapore regarding the *International Convention against the Taking of Hostages*, opened for signature 17 December 1979, 1316 UNTS 207 (entered into force 3 June 1983)

The objection was published in Spain's Official State Gazette of 21 March 2012. The text was as follows:

> The Government of the Kingdom of Spain has examined the unilateral declaration of Article 8.1 by Singapore, on its adhesion to the International Convention on the Taking of Hostages of 17 December 1979. The Government of the Kingdom of Spain considers that this statement constitutes a reservation that is incompatible with the object and purpose of the 1979 Convention, as it is difficult to determine the extent to which Singapore has accepted the obligations stipulated in Article 8.1. This reservation affects essential obligations arising from the Convention, the observance of which is necessary for its purpose to be achieved.
>
> The Kingdom of Spain therefore objects to the reservation formulated by Singapore in section 1 of article 8 of the Convention of 1979. This objection does not prevent the Convention from coming into effect between the Kingdom of Spain and Singapore.

Spain's objection was deposited with the UN Secretary-General on 21 October 2011.

Cases — Extradition to Morocco

- Case of Tarik Sassi

On 5 January 2012, the Council of Ministers decided to extradite the Moroccan national, Tarik Sassi to the Moroccan authorities on charges of membership of a terrorist organization.

- Case of Mohamed Hayy

On 31 August 2012, the Council of Ministers agreed to extradite the Moroccan national, Mohamed Hayy to Morocco on charges of membership of a terrorist organization. Hayy, who has been in prison since 23 August 2011 by order of the Spanish High Court as a result of this request for extradition, is accused of being a member of a group which aimed to carry out violent acts against the Moroccan State, to which end it raised funds to buy weapons and explosives. Under the terms of the extradition agreement signed by the two countries in June 2009, Morocco's extradition request accuses him of being a member of a cell in the group

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based in Nador. The Second Section of the Criminal Chamber of the Spanish High Court granted Hayy's extradition to Morocco in an order of 26 December, which was confirmed on 14 March.

Cases — Extradition to Turkey
☛ Case of Firat Demirkiran

On 5 October 2012, the Council of Ministers agreed to continue the extradition proceedings requested by the Turkish authorities against the Turkish citizen Firat Demirkiran, who is charged with crimes related to organization and participation in terrorist groups. Demirkiran, who has been remanded in custody pending extradition, is suspected of engaging in various support activities for the 'Kurdistan Workers' Party' (PKK).

Cases — Extradition to Egypt
☛ Case of Hussein Salem Fawzi and Khaled Salem Ismael

On 20 July 2012, the Council of Ministers agreed to continue with the judicial proceedings for the expansion of extradition requested by the Egyptian authorities against Hussein Salem Fawzi and his son Khaled Salem Ismail. On this occasion, the request for extradition relates to the sentence issued on 1 March 2012 by the Criminal Court of Giza (Egypt), which sentenced the two men to fifteen years in prison on charges of misappropriation and embezzlement. The ruling stated that they had bribed senior officials in the previous government to purchase publicly owned and environmentally protected land at a price much lower than the market rate, in violation of Egypt's national and environmental law. This request for extradition extends a previous application in June 2011 to prosecute them for three cases in which they are accused of causing losses of public funds in collusion with public officials, bribery and trading in influence and money laundering. The Spanish High Court granted their extradition to Egypt for this first case. However, the Constitutional Court halted the extradition pending the ruling on the appeal filed by the father and son brought before the High Court. Hussein Salem and Khaled Salem are also charged with offenses related to money laundering, corruption in international business transactions, bribery and fraud by the Central Court of Instruction No. 5. They are currently on bail.

Cases — Extradition to Spain

Spanish authorities have applied for the extradition of various individuals for trial in Spain.

With respect to the applications for extradition from judicial bodies, the executive acts as an intermediary between States because according to the Ruling by the Supreme Court of 31 May 2005, State administrations are not competent to handle active extradition requests.

Cases — Extradition from France
☛ Case of José Luis Urrusolo Sistiaga

On 9 March 2012, the Council of Ministers approved an Agreement which requested that France extend the request for extradition of the ETA member Jose Luis Urrusolo Sistiaga on charges of attempted murder and terrorism committed in 1991, when Urrusolo Sistiaga and another individual allegedly sent two parcel bombs addressed to a person in Benidorm (Alicante) via a courier company in Valencia. The address labels were handwritten by the respondent. At 5pm the same day, one of the packages partially exploded while it was being

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moved to the central warehouse of the courier company, without injuring any of the employees. Although the respondent is serving a prison sentence in Spain, the extension of the extradition is due to the fact that the acts for which he is now being sought by the Spanish High Court were not part of the original request to France.

José Luis Urrusolo Sistiaga was handed over to Spain by the French authorities on 23 August 2001.

☛ Case of José Manuel Azcárate Ramos

José Manuel Azcarate has been serving a prison sentence in Spain since January 1986. On 24 May 2011, he failed to comply with his obligations to report to the police and not to change residence after he was approved for the grade 3 semi-open prison regime. On 7 March 2012, the prisoner was arrested in France on 7 March 2012, after an order for his arrest and imprisonment was issued.

On 20 April 2012, the Council of Ministers approved an agreement applying to France for the extradition of José Manuel Azcárate Ramos to face a prison sentence of thirty years imposed as a result of three further cases, for which he still has to serve 4,394 days.

The respondent was found guilty in Spain of a kidnapping committed in December 1985, placing two bombs in October 1984 and being a member of an ETA commando until 1986.

☛ Case of Santiago Arrospide Sarasola

On 1 June 2012, the Council of Ministers agreed to apply to France for an extension of extradition to try the ETA member Santiago Arrospide Sarasola in Spain for the crime of attempted terrorist murder. Santiago Arrospide was handed over to Spain in December 2000, and is serving a prison sentence in Spain as the instigator of several attacks that killed dozens of people. The French authorities must extend the extradition in order to enable him to be judged for further offences.

☛ Case of Juan Carlos Iglesias Chouzas

On 3 August 2012, the Council of Ministers agreed to apply to France for a further extension of the extradition of Juan Carlos Iglesias Chouzas for terrorist offences resulting in death, theft and use of a motor vehicle, illegal detention, illegal possession of weapons and attempted murder concurrent with an offence against authority. This new application relates to facts not included in previous applications for extradition, made since his arrest in France in 2000 after spending fifteen years subject to arrest warrant. He was handed over to Spain by the French authorities on 13 September 2005 and he is currently serving a prison sentence in Spain.

☛ Case of Alberto María Ilundain Iriarte

On 21 September 2012, the Council of Ministers agreed to ask France to extend the request for extradition made in 2001 against Alberto Maria Ilundain Iriarte so that when he is handed over to Spain, he may also be judged for a further case in which he is accused of membership of the terrorist organization ETA and stockpiling of weapons of war. Alberto Ilundain was arrested in France in September 2001 and is serving a prison sentence there for crimes committed in that country. The French government granted his extradition to Spain in November 2001 to face trial in two cases: one in which he was charged with murder, and

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another in which he was charged with the crimes of attempted murder and stockpiling of weapons of war. An application was also made to France for his handover on these grounds in 2001, but the French authorities rejected that request on the grounds that the facts alleged by Spain would have prescribed under French law. The request now being made is based on the fact that the extradition procedure that has applied to France since 2005 is the convention established by the *Treaty on European Union* signed in Dublin in 1996, which states that 'extradition may not be refused on the grounds that the prosecution or punishment has prescribed according to the legislation of the Member State requested.'

☛ Case of Aurore Martín

By order of the Pau Court of Appeal of 23 November 2010, Aurore Martín, a member of the Batasuna organization, was handed over by the French authorities on 1 November, 2012 to the Spanish authorities which had made an application to that end by virtue of a European arrest warrant in July 2009, which was reiterated in October 2010. The presiding Magistrate of Central Examining Magistrate's Court No. 5 of the Spanish National Court, Pablo Ruz, decided on pre-trial custody for the alleged crime of membership of a terrorist organization on 2 November 2012.

Cases — Extradition from Italy
☛ Case of Lander Fernández Arrinda

On 6 July 2012, the Council of Ministers agreed to apply to Italy for the extradition of Lander Fernández Arrinda, who is charged with a terrorist offence. The respondent, who has been detained in Italy since 13 June 2012, is suspected of carrying out attacks of street violence in Bilbao on 20 February 2002 with another person.

Government Policy — Revocation of a Subsidy Awarded to Syria

On 27 July 2012, the Council of Ministers authorized the revocation of a multi-year international development cooperation grant in the government's foreign policy, granted in October 2010 to the Local Government Ministry of the Arab Republic of Syria to carry out a project to support institutional and administrative reform in the government and municipalities of al Hassakeh, amounting to EUR 520,000.

The revocation has been made due to the changes in the circumstances that made its award advisable, and in particular the ongoing and systematic violation of human rights and fundamental freedoms and the use of violence by the Syrian authorities against the country's population.

Government Policy — Government Pardons Four Policemen Convicted of Torture

On 23 November 2012, the Spanish government decided to pardon four police officers belonging to the police force of the Autonomous Community of Catalonia who had been convicted of torture by the Court of Barcelona in November 2008, in a sentence confirmed by the Spanish Supreme Court in December 2009, contrary to the opinion of the Magistrates of the Court of Barcelona and the Office of the Prosecutor. In Spain, no justification of a pardon by the executive branch is required. The sentence of deprivation of liberty was replaced by a payment of a fine of EUR 7,000 for each individual convicted. In February, they were granted

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the first measure of grace when their sentences were reduced to two years in prison, a threshold with which offenders with no criminal record can avoid prison.

The four officers were convicted in July 2006 for the torture of a Romanian citizen, who they arrested in error, having mistaken him for someone else. Three of them received sentences of six years and seven months in prison on charges of torture and aggravated assault and the fourth received two years and three months in prison for a crime against moral integrity. The Supreme Court reduced the sentence of the first three to four years and six months in prison. The pardon led to a protest signed by around two hundred Magistrates, which stated that the government's action was 'unbecoming of a democracy, illegitimate and ethically unacceptable.'

In September 2011, the previous government also pardoned three other officers from the same corps, who had been sentenced to four years in prison for illegal detention and torture committed in June 2006.

Spain ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on 21 October 1987 and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on 4 April 2006. Spain also ratified the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* on 28 April 1989.

Government Policy — Contributions to International Organisations

On 21 September and 21 December 2012, the Council of Ministers approved, *inter alia*, various contributions to international organisations:

- EUR 37,500 for the United Nations Mine Action Service (UNMAS)/International Trust Fund for Demining and Mine Victims Assistance;
- EUR 50,000 for the International Commission against the Death Penalty
- Various UN bodies received contributions. The beneficiaries were:
  - The United Nations High Commissioner for Human Rights (UNHCHR) (EUR 650,000);
  - The Central Emergency Response Fund (CERF) (EUR 2 million);
  - The Mediation Support Unit (EUR 12,500);
  - The UN Fund for the Special Team in charge of applying the UN Global Strategy against Terrorism (EUR 60,000);
  - The UN Democracy Fund (EUR 15,000);
  - The Office for Disarmament Affairs (EUR 15,000);
  - The UN Office on Drugs and Crime (EUR 40,000).

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