



THE GUERNICA CENTRE
FOR INTERNATIONAL JUSTICE

**SPANISH NATIONAL CRIMINAL COURT
CRIMINAL CHAMBER
SECOND SECTION**

Before: Magistrate José Antonio Mora Alarcón (President)
Magistrate Fernando Andreu Merelles (Reporting Judge)
Magistrate María Fernanda García Pérez

**CASE No. 97/2010
COURT RECORD No. 4/2015
THE JESUIT MASSACRE TRIAL**

Public Prosecutor: Teresa Sandoval

Private Prosecutor: Almudena Bernabéu
Manuel Ollé
José Antonio Martín Pallín

Defence Counsel: Jorge Agüero Lafora for Inocente Orlando Montano

Date: 11 September 2020



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The judgement in the Jesuit case

On 11 September 2020, at 13.00 CET, the hearing for the reading of the judgment for the trial of the massacre of the six Jesuit priests and two women in El Salvador on 16 November 1989 took place. The Court unanimously convicted the defendant, Colonel Inocente Orlando Montano, as bearing criminal responsibility for five crimes of murder as a terrorist act. He was sentenced to 26 years, 8 months and 1 day of imprisonment for each of the five crimes. In sum, he was sentenced to 133 years, 6 months, and 5 days in prison, of which he will serve a maximum of 30 years of effective punishment as mandated by Spanish criminal law.

In the judgment, the Reporting Judge, Fernando Andreu Merelles, described the historical-political context of El Salvador in the years prior to the events, emphasizing the internal armed conflict. He explained the role of Ignacio Ellacuría and the rest of the Jesuit fathers at UCA as leading mediators in a negotiated path and dialogue towards peace in El Salvador.

The judgment set out the structure of the armed forces in 1989, which were formally and operationally led by the High Command comprised of President Cristiani; Defence Minister Larios; the Deputy Ministers of Defence and Public Security, Zepeda and Montano; and the Chief and Deputy Chief of the Joint Chiefs of Staff, Ponce and Rubio. Almost all of them were part of the military cohort known as the “Tandona”, and they made all of the relevant decisions by consensus.

The judgment chronologically outlines in detail the events that led to the eight murders from 11 to 16 November 1989. It started with a psychological operation designed by the High Command and implemented through the military radio to identify Ellacuría as a terrorist enemy, labelling him the “brains of the FMLN” and inciting his assassination. This was followed by declaring a state of emergency, carrying out of searches on the UCA campus and establishing a strict military surveillance perimeter to ensure that nobody entered or exited the university. After, on 13 November 1989, the command unit of the Atlacatl Battalion, an elite squad of the Salvadoran army transferred by the High Command expressly to assassinate the Jesuit fathers, conducted a raid on the residence of the Jesuit fathers of UCA. The Reporting Judge subsequently mentioned the successive meetings that took place on 15 November 1989 between the most senior officers of the military to adopt more aggressive measures against the FMLN and political dissidents, underlining the meeting of the High Command in which they agreed to kill Father Ellacuría without leaving any witnesses. Finally, the Reporting Judge also recounted the preparatory acts and the execution of the murders by the commando unit of the Atlacatl Battalion on the night of 15 and 16 November 1989 as well as the international reaction condemning both the crime and the cover-up orchestrated by the High Command. These attempts to hide the truth consisted of (1) the failure of the judicial process in El Salvador in 1992 to prosecute those responsible for the assassination; and (2) an Amnesty Law which perpetuated the impunity for the crimes.

With regard to the examination of the evidence, the Court considered the statement of former Lieutenant René Yussly Mendoza Vallecillos to be of vital importance, after acquitting him of all charges due to the statute of limitations and intervening as a witness during the trial. The judgment also highlighted the importance of the expert witness Professor Terry Karl’s intelligence reports, the conclusions and detailed explanations of which were decisive in establishing the charges and convincing the Court of the elements of the crimes. In this sense, it should be noted that this is the first time that an academic expert’s report has been admitted as expert intelligence evidence by the courts in Spain. This is highly significant and sets an important precedent for the future.

The Court pointed out that the principle of passive personality is the jurisdictional title which gives the Spanish judiciary jurisdiction over this case, under Article 23.4.e).4 of the Organic Law of the Judiciary, amended in 2014. This legal reform dramatically reduced the principle of universal jurisdiction in Spain. According to the current legislation, the Court can only hear crimes of terrorism if the victim was a Spanish national at the time of the commission of the acts. Despite this, the ruling Court notes that, on the facts, eight crimes of terrorist murder had been committed; however, its jurisdiction only enabled it to rule and condemn on five of them.



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The Reporting Judge held that the crimes amounted to “terrorist murders” under Articles 406 and 174a(b) of the Spanish Criminal Code in force at the time of the events, which correspond to Article 573(1) of the current Criminal Code. According to the judgment, the homicidal intent of the author of the crime was direct with respect to Ignacio Ellacuría, since the author was consciously willing to kill him; regarding the other seven victims, the defendant acted with *dolus eventualis*, since he consented to the more than probable result of their deaths by giving the order to eliminate any witness.

According to the Court, it was established that the members of the High Command of the Salvadoran Armed Forces, acting as a collegiate decision-making body and including Deputy Minister Montano, decided to execute the person who was most intensely and effectively promoting and developing peace, Father Ellacuría. The reason behind their decision was that they saw their positions of power threatened while the scale and success of the offensive carried out by the LWF in November 1989 was growing. To this end, following a preconceived plan, they gave the direct and executive order to the Col. Director of the Military School to kill Father Ellacuría without leaving any witnesses alive, and they provided him with the necessary means to ensure the success of the operation.

Regarding the classification of the facts as terrorism, the Court noted that “terrorist aim” also applies to the field of violence exercised from the state apparatus itself, known as “State terrorism”, which is forged and implemented from specific organizational centers of power. In the present case, it took place within the High Command of the Armed Forces, to which Montano belonged.

The judgment cited the 1949 Geneva Conventions, applicable in situations of international and domestic armed conflicts, to enshrine the principle of civilian immunity, whereby the civilian population must not be subjected to any attack or violence. In this sense, the Court emphasized that the eight murders were committed with the purpose of causing terror among the civilian population in the context of the Salvadoran internal conflict. According to the judgment, the reason why the members of the High Command decided to commit such a crime was the fact that killing the Rector of the University would destroy any remaining hope or path for dialogue and it result in social confusion and terror regarding the present and future of Salvadoran society.

Hence, the Court confirmed that the High Command comprising the President of the Republic, the Defence Minister, the Deputy Defence and Public Security Ministers –a position held by the defendant–, the Chief and Deputy Chief of Staff, agreed upon and ordered the murder of the eight victims, obliterating the potential for future dialogues and negotiations, causing alarm, and seriously disrupting the social peace through the violent and serious crime of murdering Father Ellacuría and any witnesses.

To achieve their objectives, the authors tried to make the public believe that Ignacio Ellacuría and the other priests who worked as professors at UCA, especially Ignacio Martín Baró and Segundo Montes Mozo, belonged to the intellectual leadership of the FMLN. They crafted the false idea of an enemy infiltrating the structures of society, whose aim was to terminate their prevailing values and their absolute power.

On the merits, this judgment appears essential and unprecedented since, for the first time in Spanish jurisprudence, it recognized the figure of co-perpetration through organized apparatuses of power. The judgment cited Professor Claus Roxin's theory in holding that the High Command of the Salvadoran Armed Forces was the group which, jointly and with functional control of the act, took the unanimous decision to execute the Jesuit fathers through the command unit of the Atlacatl Battalion, who would automatically obey their orders following the chain of command, especially in the context of an internal armed conflict.

The Court rejected the mitigating circumstances put forward by the defence, namely, state of necessity, irresistible force, insurmountable fear and undue delay. With regards to the latter, the Court held that the delayed judicial proceedings in Spain began in 2009, right before the expiration of the statute of limitations, mainly due to the notorious impossibility of trying the events in El Salvador. Furthermore, it was noted that the extradition process was delayed because Montano had to serve another criminal sentence imposed by the US authorities. The Court also noted the complexity of the case since all or most of the evidence was abroad.



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The innovative judgment also gives hope to future justice efforts by explicitly recognizing the value and usefulness of the *actio popularis* and of the popular prosecution led by Almudena Bernabéu and Manuel Ollé, deeming it: “indispensable, decisive and determining”. According to the Court, “the role [of] the popular prosecution [was decisive] for the fair completion of the present process and for ending the impunity of said crimes; [...] its contribution was essential for the good ending of the process, collaborating to the termination of the process, both in Spain and abroad, as well as facilitating the work of the Central Court during the investigation phase and that of this Court during the trial”.

This judgment might be appealed before the Spanish Supreme Court in the next few days by the defendant.

Almudena Bernabeu, Director of the Guernica Group said: “This important judgment brings justice and hope to those who have not stopped looking, the families of the victims, such as the family of Ignacio Martín Baró, and the Salvadoran people. Furthermore, it confirms something that those of us who believe in universal justice have been longing for: that it is fundamental that laws provide access to justice for victims of international crimes and human rights violations who, as in the case of El Salvador, have found all doors closed. With this judgment, once again, the Spanish courts are giving hope to thousands of people. We hope that this effort can be replicated in El Salvador and that it will be the beginning of a real transformation in the country so that events like this will never happen again”.

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