



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

THE JESUIT MASSACRE TRIAL

Public Prosecutor: Teresa Sandoval

Private Prosecutor: Manuel Ollé
Almudena Bernabéu
José Antonio Martín Pallín

Defence Counsel: Jorge Agüero Lafora for Inocente Orlando Montano

Hearing: Third Session

Date: 11 June 2020



THE GUERNICA CENTRE FOR INTERNATIONAL JUSTICE

Trial Briefing Note – Session Three

On 11 June 2020, starting just after 10:00 hrs, the trial for the massacre of six Jesuit priests and two women in El Salvador on 16 November 1989 resumed. In this third session, which is the last session to take place in June, members of the two delegations sent by the Spanish Congress of Deputies to El Salvador in November 1990 and September 1991 testified. The first parliamentary delegation had a twofold objective: on the one hand, to learn about the legal proceedings initiated in El Salvador to determine who was responsible for the death of the Jesuits and, on the other hand, to learn about the political situation in El Salvador. The second parliamentary delegation, sent a year later, aimed to continue the work begun by the previous delegation and above all to attend the public hearings as international observers.

The members of these parliamentary delegations who have declared today are the following: firstly, the secretaries of the first and second delegation respectively, Mr José Luis Ruiz-Navarro Pinar and Mr. Enrique Arnaldo Alcubilla. Secondly, the Members of Parliament Mr. Manuel García Fonseca, Mr. Joseba Mirena Zubia Achaerandío and Mr. Pere Baltá i Llopart. All members of both delegations, except Mr. Mirena who was only a member of the first. Finally, the professor of criminal law of the University of Lleida, Mr. Josep María Tamarit Samalla, who was sent by the Spanish Ministry of Foreign Affairs to carry out a report on the conditions in which the trial took place in El Salvador as well as to support the second parliamentary delegation.

Regarding the declarations of the deceased witnesses, Mr. Francisco Cádiz Deleito and Mr. Fernando Álvarez de Miranda, both Spanish Ambassadors in El Salvador during and after the commission of the events, the Court decided to reproduce their prior declarations, recorded at the investigative stage, during the July sessions, before proceeding to the presentation of the documentary evidence.

In this third session, the issues highlighted by the witnesses in their statements were the following:

Firstly, with regard to the criminal acts, the witness statements confirm that there was a military operation with the participation and direction of the High Command. Specifically, they all pointed out that, previously to the commission of the crimes, a meeting of the High Command took place where the Minister of Defence, Colonel Larios, his two deputy ministers, Colonel Zepeda and the defendant, Colonel Inocente Orlando Montano, were present, as well as the President of El Salvador, Mr. Alfredo Cristiani. According to Mr. Manuel García Fonseca, that meeting was decisive because “it was there where it was decided to assassinate the Jesuits of the UCA”.

Similarly, witnesses expressed that it was hard to believe the fact that a single battalion commanded by a single officer could carry out a military operation of such grave consequences. In other words, the witnesses reiterated their refusal to believe that Colonel Benavides, unilaterally, could have taken the decision to order the Atlacatl Battalion to murder the Jesuits. In particular, taking into account that the Jesuit University was an institution with great popular recognition and intellectual prestige and its rector, Mr. Ignacio Ellacuría, the person who led the peace process in El Salvador. Specifically, the witness, Mr. Joseba Mirena, stated that the attack on the Jesuits was duly prepared in view of the figure of Father Ellacuría as “a representative of the theory of liberation”, and the fact that the army itself pointed to him as the leader of the guerrillas.

Secondly, regarding the judicial investigation of the events, the witnesses who were members of the first parliamentary delegation highlighted the meeting they had with Judge Zamora, who conducted and pronounced the sentence in the case. According to the witnesses, Judge Zamora tried to conduct the investigation in the best possible way despite the persistent obstacles and difficulties, suffering threats and pressure. Specifically, the witnesses have stressed how irregular it was that the authority that exercised the functions of the Judicial Police was the Commission for the Investigation of Criminal Acts, a body composed of members of the military and headed by Lieutenant Colonel Rivas.

The witnesses indicated that the above-mentioned Commission was the sole entity that had questioned the accused, an interrogation which took place during a single hearing, without legal assistance and without the presence of the investigating Judge Mr. Zamora. In fact, the witnesses stated that the Investigating Judge had no confidence



THE GUERNICA CENTRE FOR INTERNATIONAL JUSTICE

whatsoever in the elements of evidence that the Commission had submitted to the trial. In this regard, the witness and criminal law expert witness, Mr. Josep María Tamarit, declared that the process did not meet the minimum standards of a fair trial and due process, due to the limitations of the Investigating Judge, who did not have the power to subpoena any of the accused or any member of the military forces. In conclusion, as cited in the first report and as the witnesses testified in today's session, the Salvadoran armed force became the real "owner" of the criminal process when it involved its members. This was also reflected in the conclusion reached by the member of the Spanish Parliament, Mr. Pere Baltá i Llopart, reached today during his statement: "there was a factual power that did everything possible to ensure that the investigation was not carried out".

Another aspect that the witnesses have highlighted during the session concerned their conviction that there were other alleged authors involved in the events that were not being investigated in the judicial process. Members of both parliamentary delegations have repeatedly argued that, during the conduct of interviews in the country with political and trade union actors as well as during the Salvadoran trial sessions, the opinion held by the majority - which raised this issue repeatedly - was that the responsibilities of the intellectual perpetrators of the massacre had yet to be unveiled. In this sense, Mr. Enrique Arnaldo Alcubilla argued that the most repeated phrase during the trial was that "not everyone who has to be here is here", in reference to those who ordered or rather, aided and abetted the killings. In the same vein, Mr. Baltá i Llopart stated that multiple sources and documentary evidence stated that "the famous Tandoná" had indeed ordered Colonel Benavides to end Ellacuría's life.

Thirdly, and regarding the public hearing, all the witnesses transmitted the same impression: the criminal procedure was "fraudulent and incomplete". Even going as far as saying, Manuel García Fonseca explained that returned to Spain with the feeling that "the jury was rigged". Among the multiple and serious irregularities, Mr. Tamarit Samalla stressed that there was no direct questioning of any of the accused or witness, and the trial consisted mainly in the reading of documentary evidence for more than thirty hours.

Additionally, the witnesses declared the disagreement they felt during the act of the trial, due to the multiple external interferences that occurred when the hearing took place and whose purpose was to alter the jury's mood. The witness, Mr. Arnaldo Alcubilla, maintained that the interferences were persistent and continuous, every day in a certain way, with protests noisy demonstrations against the presence of foreign delegations and helicopters flying low, so that sometimes it was not possible to hear those who intervened in the trial. He also emphasized that the attorneys were approaching to the jury, sometimes arriving to speak with its members. The last element that several witnesses quoted as irregular was the fact that the jury's verdict was deliberated in a few hours, considering the fact that the jury had to answer more than 80 questions after such an intense trial.

The last witness to testify in the third session, Criminal Law Professor Josep María Tamarit Sumalla, —who had the opportunity to attend all the sessions of the trial in El Salvador and to review the documentation of the procedure—, stated that "there was no willingness to investigate beyond Benavides, and this was due to the position of, or pressure from, the highest commands of the Salvadoran Armed Forces (...) he could not have decided it alone, until that moment he seemed to have had an exemplary behavior, so it could not be an unilateral decision, but a decision that was made by his superiors".

In addition to highlighting the lack of minimum guarantees throughout the judicial procedure —the absence of evidence being manifest—, with regards to attitude of the Army towards the Jesuits, and in particular Father Ellacuría, Mr. Tamarit stated: "there was a climate of harassment and hostility against them, as Ellacuría publicly denounced human rights violations and led a campaign of harmony and dialogue in order to ensure that there was no bloodshed during the negotiation between the FMLN and the Government. This encouraged the Army to persecute the Jesuit parents, and even threaten them through the media, with intimidating messages such as that the UCA was a nest of terrorists".

The trial sessions will resume on 8 July 2020 at 10:00 hrs (CET), with the testimony of Mr. Yussy René Mendoza Vallecillos as a witness, continuing at 17:00 hrs with the depositions of Álvaro Henry Campos Solarzan and Edward Sydney Blanco Reyes —prosecutors of the criminal procedure conducted in El Salvador, who later became attorneys for the private prosecution on behalf of the Company of Jesus in the same trial—. Afterwards, Mrs.



THE GUERNICA CENTRE FOR INTERNATIONAL JUSTICE

Lucía Barrera, the only eyewitness to the murders of the Jesuits in the UCA, as well as her husband, Jorge Cerna, will testify. The session will conclude with the statement of Mr. Eric Warren Buckland, Major in the U.S. Army. The statement of Father Miguel Francisco Estrada Lemus, which was scheduled for that same day, will be reproduced on video, due to his death.

*

*

*

*

*