18/98: IN JUSTICE, THE ONLY SOLUTION: ABSOLUTION.

Surprise, shock and worry have been the order of the day throughout the process for those who have participated in the trial as legal observers. The proverbial Pandora's Box was opened time and time again throughout the trial, releasing calamities in the form of direct and indirect violations of legal and procedural principles, committed by both the examining magistrate Baltasar Garzón, and by the Penal Court, Third Section, of the *Audiencia Nacional,* during the trial which ran from 21 November 2005 to 14 March 2007.

The defence, in the pleading phase of the trial, once again picked apart each of the violations of legal and procedural rights. The first occurred in 1989 during the initial investigation and taking of evidence 75/89 (a broad assortment of phone tapping, following people, documents obtained through different procedures) which the defence attorneys had no access to until the end of December 2005, such that the trial was started without them being present in the courtroom as evidence.

The second violation occurred when the court refused to provide copies of the evidence 75/89, which resulted in the request and granting of an appeal for protection for the attorneys by the presidents of the State Attorneys' Council and the Basque Attorneys' Council, as well as the deans of bar associations of Vizcaya, Alava, Guipúzcoa and Madrid. Following a meeting held by the aforementioned presidents and deans with the president of the *Audiencia Nacional*, they were able to photocopy evidence 75/89 from criminal court number 5 of the *Audiencia Nacional*, so as not to violate the fundamental right to defence as well as the principle of equality of arms in the penal process with the charges arising from this evidence from 1989.

The third of the reported violations was that of fundamental rights of several detainees who had been subjected to physical and mental torment, to protection against self-incrimination, against a coerced confession of guilt or to refrain from testifying (this Court had an interesting opinion on how the courts in Strasbourg ruled on this fundamental right when the accused decided not to testify regarding the charges). These serious violations of legal and procedural guarantees are in contravention of domestic and international human-rights legislation regarding detainees, torture and other cruel, inhumane or degrading treatment or punishment. The only correct decision in this case would be a full invalidation of any evidence or confession obtained under torture.

The fourth of the violations was the temporary closure and suspension of activities of businesses and associations decided upon by the criminal judges along with the resulting negligence of the administrators of assets of the shuttered businesses, which violates the rights of businesses, foundations and associations to recover assets seized or closed as a "precautionary" measure.

What is revealing is that at no time during the trial were the defence's arguments given any semblance of validity by the tribunal, in any of the multiple incidents raised by the violation of legal rights and procedure. All of them have yet to be resolved in sentencing. As an illustrative example, let's not forget the reading of documents instead of showing them to the accused when giving testimony, or the when the National Police (from the Central Intelligence Unit) or members of the Civil Guard (from the Information Service) that took evidence on the scene, became expert witnesses on intelligence, testifying on their own activity, when procedural law and jurisprudence state that this phase of the process is a simple act of reporting, thus corrupting the testimony of the expert witness and the procedure, along with the documents brought in from the letters rogatory in France, many of which were not translated. In this sense the right to a trial with all guarantees and an impartial judge is violated.

The 52 citizens, the associations and businesses, are all charged with being members of or collaborators with a terrorist organisation starting with the fiction of the charges themselves, based on the assertion that organizations of the nationalist left are the various fronts of ETA, resulting in the new concept of terrorism by contamination.

What this trial has made obvious is that the accused, the associations and the businesses have carried out political, social and business-related work in a public manner and without hiding their activities. That they are an inseparable part of a plural Basque society and that they are criminalised and judged not for what they have done but for their ideas. The political, and now judicial, assumption where "everything is ETA", promoted by Judge Garzón in conjunction with the signers of the Pact for Liberties and against Terrorism in December 2000, is part of the reproachable penal theory of the enemy, who must be dealt with radically in a state that claims to promote the rule of law.

The tribunal has its opportunity to put an end to this era. The only fair decision, considering the motives for this "macrotrial" and the violations of legal and procedural guarantees that have resulted, is the acquittal on all charges for each of the accused. Any other judicial solution to this political trial can only be interpreted as an unjust decision loaded with political reasoning but not fair in terms of legal reasoning. In our opinion, a guilty sentence would be a twisting of the facts, the laws and jurisprudence itself, as it would be tantamount to condemning people for their ideas and not the acts that they may have committed. In Justice, the only solution is ABSOLUTION.

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