

THE JESUITS CASE

The trial against Inocente Orlando Montano Morales

From 1979-1992, the Salvadoran Military carried out a reign of state terror and repression against the civilian population even as they fought a bloody ten-year civil war with the Farabundo Martí National Liberation Front (FMLN). In this context, on 16 November 1989, six Jesuit priests, their housekeeper and her 16-year-old daughter were killed by the Atlacatl Battalion of the Salvadoran Military at the José Simeón Cañas Central American University in San Salvador.

Following the ratification of the Chapultepec Peace Accords on 16 January 1992, a Truth Commission was established to investigate crimes committed during the war. The Truth Commission concluded that these crimes were ordered by Salvadoran officials and executed by the Salvadoran armed forces. Although the Commission reminded El Salvador of its duty to investigate and prosecute crimes under international law, in 1993, the Salvadoran legislature passed a General Amnesty Law, which operated as an instrument of impunity and prevented all investigations and prosecutions of violations committed during the war.

Procedure

On 13 November 2008, the Center for Justice & Accountability, under the leadership of Professor Carolyn Patty Blum, and International Attorney Almudena Bernabeu, with Spanish co-counsel Manuel Ollé, filed a complaint, using Spain's universal jurisdiction laws, before the Spanish National Court as private and popular prosecutors on behalf of the family of the victim Ignacio Martín-Baró and the Spanish Pro Human Rights Association. The complaint was filed against former Salvadoran President Alfredo Cristiani Burkard and fourteen former military officers and soldiers.

On 13 January 2009, Judge Eloy Velasco charged fourteen former officers, including Colonel Ponce, former head of the Armed Forces at the time of the murders; General Rafael Humberto Larios, former minister of defense; Colonel Juan Orlando Zepeda, former vice minister of defense; and Inocente Orlando Montano, former vice minister of Public Security, with murder, crimes against humanity and terrorism.

On 30 May 2011, six new defendants were added to the indictment, and international arrest warrants were issued on charges of terrorism and crimes against humanity.

On 23 August 2011, US authorities arrested Montano on charges of federal immigration fraud. He was indicted on 10 February 2012 for false declarations to the US authorities regarding the date of his entry into the territory and his military training in El Salvador. On September 2012, he pleaded guilty, acknowledging he had given false statements. His trial took place in August 2013 and he was sentenced to 21 months in prison on 27 August 2013.

On 23 July 2014, the Criminal Chamber of the Spanish National Court submitted a supplemental brief to the US authorities in support of a pending request for extradition issued on 4 November 2011. In this request, Spain urged the US authorities to allow the extradition of Montano from the US to Spain to face trial for the murder of the six Jesuits, their housekeeper and her daughter, committed in El Salvador on 16 November 1989.

On 5 January 2016, a judge from the Eastern District Court of North Carolina granted the request to extradite Montano to Spain and certified Montano's extradition to the Secretary of State. U.S. Magistrate Judge Kimberly Swank concluded that the evidence presented was sufficient to show that Montano, as the Deputy Minister for Public Security in El Salvador and member of the Military High Command at the relevant time, contributed to the planning of the killing of the Jesuits: "*In short, the government's evidence shows (Montano) was a decision-maker and member of a group of officers who collectively ordered the unlawful killings of Jesuit priests*". On 1 April 2016, Montano's lawyers filed a petition for a writ of *habeas corpus* to reverse the extradition order.

On 21 August 2017, the US Eastern District Court of North Carolina dismissed Montano's petition for a writ of *habeas corpus*, finding no irregularity in the extradition proceedings and no basis upon which the petitioner's request for release could be granted.

On 15 November 2017, the Supreme Court dismissed Montano's last request to halt his extradition to Spain, and on 29 November 2017, Montano was extradited to Spain and placed in police custody. He was accused of actively participating in planning the murder of the six Jesuits.

On 12 July 2018, the Criminal Chamber of the Spanish National Court partially upheld the appeal filed by the accused, eliminating from the indictment the alleged crime against humanity that the investigative judge had excluded from the procedure in 2014. The indictment only referred to the eight murders committed with a terrorist intent, therefore, Montano will be facing charges of murder and terrorism.

On 19 November 2019, the Spanish National Court extended Inocente Orlando Montano Morales's preventive detention status for two additional years.

The Spanish National Court has set the trial for the summer of 2020, starting on 8 June. The Guernica Centre and the Spanish Pro Human Rights Association (APDHE) will be acting on behalf of victims in Spanish case as private accuser or prosecutor.

This trial is extremely significant. It has the potential to reopen the discussion in Spain about the necessity and importance of an effective universal jurisdiction law. It also supports the ongoing realization that countries like Spain need to ensure that victims of human rights violations can find redress when legal avenues have been foreclosed in other jurisdictions due to restrictive legislation, corrupt judiciaries, impunity, or political opposition. This trial also comes at a time when Salvadoran civil society is struggling to push forward investigations and prosecutions in El Salvador following the Supreme Court's repeal of the Amnesty Law in 2016, while simultaneously political sectors in El Salvador threaten to enact legislation that once again could shield those most responsible from prosecution and criminal sanctions.