

MANIFESTO AGAINST IMPUNITY - IN FAVOUR OF UNIVERSAL JURISDICTION

We, social justice organisations, human rights groups, unions, solidarity associations, professional associations and people of the world that value the defence of peace, justice, the fight against impunity, respect for dignity, human rights and the rights of victims, principles which calls on us to come together beyond ideology and political positions:

We declare,

On 19 May 2009, the Deputies Chamber agreed, with the support of the majority parties, to modify Article 23.4 of the Organic Law of Judicial Power, which regulates the principle of universal jurisdiction in Spanish law. This reform completely distorts the content and reach of this principle. This transcendental decision limits national judges to try only those cases that have a “national connection” and establishes flawed criteria of admissibility that dismisses consideration of whether an investigation or judicial process filed somewhere else for crimes brought to national tribunals constitute effective prosecution of such crimes. Said agreement was taken surreptitiously, taking advantage of an otherwise inconsequential debate on the “Process of amendment to the Law of Reform to the Legislative Process for the Implantation of Judicial Office.” Thus, the Congress of Deputies has blocked the appropriate debate the issue demands.

With the aforementioned modification, Spain will join the list of countries that impose greatest restrictions on the exercise of universal jurisdiction. As a result, it will only be possible to pursue international criminals if they are physically in Spain, if the victims of their crimes were Spanish, if they have some “relevant connection” to Spain (although such connection is not yet defined in the law) and when no international court or “competent court” has opened an investigation into the issue.

This modification has not taken into account:

- That universal jurisdiction is based on the idea that some crimes are so terrible and harmful to the international community (crimes against humanity, genocide, war crimes, torture, forced disappearance, among others) that states are authorised and even obliged to investigate and judge the presumed perpetrators, regardless of where the crime was committed or the nationality of the victims, or when the offence or crime has not directly affected the state’s interests.
- That universal jurisdiction is an instrument of the fight against impunity, that is to say, a means to achieve accountability and prevent perpetrators from remaining unpunished by international law. It reflects the obligation of states that are party to international human rights treaties to prosecute or extradite those responsible.
- That unfortunately, the majority of countries in which such crimes are committed cannot or do not want to investigate and prosecute serious violations of human rights that constitute crimes of international law. As a result, the application of universal jurisdiction is a fundamental element of justice for the international community.

- That Article 23.4 of the Organic Law of Judicial Power, by facilitating universal jurisdiction, facilitates Spain's observance of international human rights treaties that, as a member of the international community, it has ratified and is obliged to respect and comply with.
- That the Spanish Constitution, in Article 96.1, establishes that international treaties validly signed and ratified, once officially published, form part of the country's domestic order. As a consequence, the doctrine of the Constitutional Court, since 2005 (Guatemala case), asserts that the reach of universal jurisdiction is absolute and supersedes the existence or non-existence of national interests. It also states that restrictions based on the nationality of victims imply an added requirement that is not considered in the law and that is in contradiction of the nature of these crimes and the shared aspiration for universal prosecution. Moreover, in the sentencing of the Scilingo case the High Court recognises the prosecution of some international crimes as being obligatory and opposable to all (*ius cogens* and *erga omnes*).
- That universal jurisdiction represents the last resort for victims of crimes under international law that seek truth, justice and reparation, including guarantees that the offences will not be repeated. Owing to universal jurisdiction proceedings in Spain and the resulting judicial resolutions, there has been much success in satisfying the legitimate rights of victims and complying with international obligations to investigate and sanction the perpetrators of crimes against international law. Likewise, it has given impetus to the opening of processes in the countries where such crimes are committed, and the achievement of judgements in other courts around the world. Spanish courts have thus contributed to raising consciousness of universal justice while also undermining the impunity the majority of those who are responsible for these crimes currently enjoy.
- That impunity from prosecution for atrocities not only denigrates those who commit them, but also erodes the institutions of the societies that allow them, thereby constituting elements that destabilise democracy.

With the aforementioned in mind, we declare:

- That the defence of human rights is an absolute obligation of states and cannot be subordinated to national interests and economic or political pressure without compromising the international responsibilities of the state.
- That parliamentary groups which have voted in favour of the reform have abused their power and the trust placed in them by shielding the issue from public debate and preventing an objective discussion in the mass media.
- That, in contrast to the generalised and false perception that universal jurisdiction could convert Spain into a "global gendarme", it is important to emphasise that there are other national courts (Denmark, Holland and Germany) that also exercise universal jurisdiction. The legal standards set by Spanish judicial resolutions in this area have contributed, in an effective manner, to advancing international criminal law.

- That tackling crimes which are repugnant to humanity's collective consciousness, cannot be considered meddling in the sovereignty of other countries. Indeed, through the application of the universal jurisdiction principle, it is the international community, acting through national courts, that carries out investigation and judgement of those responsible.

Because of the above stated reasons:

- We deplore this decision, taken behind citizens' back and dismissive of the feelings and views of the majority of the Spanish society.
- We deplore the fact that, rather than consolidating a horizon of effective justice for serious human rights violations, parliamentarians work to widen the space for impunity and, in consequence, we repudiate the votes that parliamentary groups have given to this measure.
- We deplore this serious setback in universal justice that debilitates the search for and consolidation of legal measures to end impunity for those who commit grave violations of human rights.
- We demand that the Spanish Senate takes into consideration the opinions of the signatories below, and that it votes with its conscience and rejects the decision approved by the Deputies chamber.
- We call on the Spanish Parliament as a whole to watch over national laws to make sure they are in conformity with international law and that they advance the application of the principle of universal jurisdiction. We demand that this reform, which denies the legitimate right of victims to obtain effective mechanisms of remedy and reparation for grave human rights violations, be halted.