

'An example of iconic jury trials in Spain: the Gürtel case'

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Introduction

- **The Gürtel case:** a high-profile case in Spain involving public institutions, municipal councils, and regional governments (Madrid, Valencia and Galicia).
- A corruption case implicating politicians and members of the *Partido Popular* [PP], a right-of-centre political party.
- The preliminary investigation led by the Central Judge of the Investigative, Baltasar Garzón. (He was subsequently, convicted of ordering illegal wiretapping of conversations between lawyers and their clients and suspended from the judiciary for 11 years by the Spanish Supreme Court on Feb. 9, 2012.)
- Intense media coverage of Gürtel in Spain in the press and the television; *El País*, the newspaper that uncovered the scandal awarded the *Premio Ortega y Gasset* 2010; a prize for its investigative journalism.



Facts (I)

- A formal complaint submitted by a former PP town councilor to the Anticorruption Prosecutor (*Fiscalía Anticorrupción*, General Office of Public Prosecution) on Nov. 6, 2007; wiretapping evidence from political meetings was presented
- The accusation targeted four businessmen (the most prominent, Francisco Correa); they had allegedly set up a business network, to embezzle funding from public institutions and for personal gain.
- *Gürtel* is taken from Francisco Correa's last name, also means *cinturón* in Spanish, in German *Gurt*.

Facts (II)

- Correa's companies entrusted with the organization of public events by the government of José María Aznar (former Spanish President).
- *Modus operandi*: defendants gave bribes and handouts to civil servants and public authorities to win contracts.
- Various criminal causes opened in Madrid, Valencia and Galicia: offences implicated numerous people, municipal councils, and regional governments.
- The selected case, incriminating a prominent politician (Francisco Camps), is an example of an iconic jury trial involving the regional government of Valencia.



Defendants



Defendants

- The Gürtel case, in Valencia, concerns the concession of contracts to Correa's companies in exchange for gifts, mainly expensive clothing.
- Called *el caso de los trajes* [the case of the suits].
- Supporting evidence:
 - Documentary evidence: invoices for bespoke suits
 - Testimony: the statement of a tailor
- Arraignment on May 14, 2009, accused four politicians; among whom, Francisco Camps, a member of the *Partido Popular* and president of the Spanish regional government of Valencia, (*Generalitat Valenciana*) up until July 2011.



Jurisdiction

- Facts qualified as ‘passive improper bribery’: the acceptance of illegal gifts, in return for professional favors, offered to civil servants, on account of their position,’ (ex Art. 426 Spanish Criminal Code penalized by 3-to-6 months of fines and amended in 2010).
- Bribery considered an offence against the Public Administration. Competence attributed to the Jury Court under the jurisdiction of the Provincial Court.
- The four defendants, as politicians, granted special privileges in Spain (*aforamiento*), allowing trial in a higher court.
- Jury selection and trial under the jurisdiction of the Regional Supreme Court: *Tribunal Superior de Justicia de Valencia* (TSJ de Valencia)



Jury selection



Jury selection

- Under Spanish Jury Law, nine citizens sit on a jury. Trial judge on the bench of the TSJ Valencia.
- The appointment of the jury panel usually takes place in the presence of the parties under the supervision of the clerk of the court.
- In this case, the jury panel was appointed in Valencia to start the jury trial
- Francisco Camps sought to avoid jury trial in Valencia and have it moved to the Supreme Court, in Madrid.
- He lodged several appeals, all of them unsuccessful
- Finally, a jury panel of 6 men and 3 women was selected

Jury trial

- Several prosecutors present at the jury trial:
 - Public prosecutor: Anticorruption prosecutor
 - Popular prosecution: 4 people
- Accusations were leveled against four defendants, whose procedural strategies varied:
 - Two defendants negotiated a sentence agreement (*sentencia de conformidad*) before pleading guilty.
 - In consequence, the jury trial only took place with Francisco Camps and Ricardo Costa as defendants.



Ricardo Costa and Francisco Camps





Francisco Camps and his lawyer





Main evidence: declaration of key witness



Jury verdict (I)

- Towards the end of the trial, on Jan. 23, 2012, the judge passed a verdict form with 'instructions' on summing up to the jurors.
- The Verdict form listed 21 concrete questions relating to the facts and the culpability of the defendants.
- A different number of votes are required to uphold facts that are either for or against the accused:
 - 5 votes to prove favorable facts
 - 7 votes to prove unfavorable facts
- This legal requirement is listed alongside each fact in the verdict form.
- Jury deliberations took place for 3 days and a draft verdict was delivered on Jan. 25, 2012.

Jury verdict (II)

- Jury verdict forms also include ‘a brief explanation of the reasons, which justify the declaration of certain facts as proven or unproven’ according to Spanish Jury Law (perhaps its most astonishing rule).
- The jury verdict resolved to acquit both defendants of all charges.
- Judgment in consequence was pronounced on Jan. 30, 2012
- Cassation was still possible at that time before the Supreme Court but according to very strict rules, which made any appeal virtually impossible.
- Acquittal and verdict were heavily criticized in some media, who considered that a tribunal of professional judges would have given a very different ruling.



Conclusions

- In this case, debate has centered on two points:
 - Extensive pretrial and trial publicity harms:
 - Juror impartiality, always more vulnerable in comparison to the impartiality of professional judges
 - The defendants' right to due process of law and fair trial guaranteed by the Spanish Constitution
 - Whether jurors, as lay people, are able to handle complex facts and evidence associated with this specific offence ('passive improper bribery').
- At present, the Spanish Minister of Justice has announced further amendments to the Jury Law in new Criminal Procedure Act Draft for next July 2012; according to media statements, one of the proposed amendments will make reference to the competence of the jury court in relation to complex cases such as this one.

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