Jurisprudential milestones in human rights cases: Chile 1990-2013

Verdicts and other significant judicial milestones in Chilean domestic court cases for serious human rights violations committed during the 1973-1990 military dictatorship

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Principal jurisprudential milestones 1990-2013, in cases for serious human rights violations committed during Chile's 1973-1990 military dictatorship

This document provides a summary of major jurisprudential milestones (final verdicts, impeachment rulings etc) in the post-transitional (post 1990) investigation and prosecution of crimes against humanity and other major human rights violations committed in Chile between 1973 and 1990.

The document is organized in ascending chronological order. It condenses and selects from a potentially much broader set of events. For each selected event, a brief summary of the facts of the crime at issue is followed by a generic, non-technical assessment of the significance of the event itself.

The judicial verdicts referred to can be consulted in full (Spanish only) via Chile's official judicial website at www.pjud.cl, using the case code ('Rol' number) quoted in this document.

Analysis prepared by Juan Pablo Delgado, Observatorio judicial researcher, March 2013
Translation and updating by Cath Collins, Observatorio director, August 2013 and Jan 2014

CASE or EVENT	CASE CODE	COURT RESPONSIBLE	DATE	CASE OUTLINE
1) José Julio Llaulén and Juan Eleuterio Cheuquepán **[Forcibly detained and disappeared, DD]**	37.860	First level court (investigative magistrate) Judge Cristián Alfaro Muirhead, Juzgado de Letras of Lautaro, southern Chile	20/09/1993	Juan Cheuquepán, a 16 year old student, was illegally detained at home on 11 June 1974 by a group of policemen (*Carabineros*) and civilians.José Llaulén, a 39 year old farmer, was illegally detained in his home by the same group on the same day. Both were taken to the police station of the town of Perquenco, and the whereabouts of both remain unknown to the present day.
	SIGNIFICANCE: First national verdict since the 1990 transition that refused to apply **amnesty** or the **statute of limitation,** on the grounds that kidnapping should be considered an 'ongoing crime' which in the case of unresolved forced disappearance is still being committed. According to this reasoning, an ongoing crime would fall outside the temporal reach of Chile's 1978 amnesty law (which only covers crimes committed between September 1973 and April 1978). Additionally, the statute of limitation would not be applicable: the relevant countdown would not yet have begun, since the crime has not yet ceased. This verdict was unexpectedly **upheld** by the Supreme Court in 1995, ratifying guilty verdicts against the perpetrators and a civil compensation order, subsequently enforced.			
2) Bárbara Uribe and Edwin Van Jurick **[DD]**	38.638-1994	Santiago Court of Appeal	30/09/1994	Bárbara Uribe and her partner Edwin Van Jurick, both activists of the left-wing MIR movement, were illegally detained on 10 July 1974 by a group of DINA secret police agents headed by agent Osvaldo Romo Mena.The whereabouts of both remain unknown.
	SIGNIFICANCE: The Appeals Court **rejected** the **invocation of amnesty** that had been requested by Romo's defence. The Court found in favour of the applicability of the **Geneva Conventions**, in particular section IV of Article 148, which refers to the 'grave infractions' set out in Article 147. The Court also positively cited the American Convention on Human Rights, the International Convention against Torture, and the International Covenant on Civil and Political Rights, in order to declare the crimes at issue **exempt from amnesty or the statute of limitations**, on the grounds that they constituted **war crimes and/or crimes against humanity.**The Appeals Court verdict was however reversed by the Supreme Court. The case was transferred to military jurisdiction, where it was **definitively suspended through the invocation of the 1978 amnesty law,** a verdict confirmed by the Supreme Court on 19 August 1998. Nonetheless, the case was reopened thanks to a new complaint (querella) in 2005. The resulting investigation, led by special human rights case magistrate Zepeda, saw various former DINA agents charged as official suspects (procesados) on 11 December 2013, under case codeRol 24.469-2005, and was at pre-verdict stage as of early 2014.			

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3) Murder of Orlando Letelier	30.174-1994	Supreme Court	30/05/1995	On the date of Chile's military coup on 11 September 1973, Orlando Letelier was Chancellor (Foreign Minister) of the Popular Unity government headed by socialist President Salvador Allende. Subsequently exiled in Washington DC, USA, he was murdered by DINA agents on 21 September 1976 via a car bomb that also killed his North American colleague Ronni Moffitt and seriously injured her husband.
	SIGNIFICANCE: Despite its relatively early date of commission, the assassination of Orlando Letelier was never covered by Chile's 1978 amnesty law. It was expressly **excluded** from the law on the insistence of the US government. Some of the material authors of the crime were subsequently tried in the USA. These included Michael Townley, a dual US-Chilean citizen and civilian secret police agent who was extradited to the US and subsequently placed in the witness protection programme. A domestic case was opened in Chile for an aspect of the case related to the **falsification of passports** and other documents for the agents involved in the planning and commission of the assassination. In the final verdict, delivered in 1995, the responsibility of suspects **Manuel Contreras and Pedro Espinoza, former head and second in command of the DINA secret police**, was discussed in terms such as 'the authors behind the authors'. Although their **convictions for homicid**e were confirmed, the mitigating circumstance (*atenuante*) of half statute of limitation **(prescripción gradual)** was applied (see Article 103 of the Criminal Code, *Código Penal*). The effect was to reduce the final sentences against Contreras and Espinoza to 7 and 6 years, respectively. The televised case hearings produced a public commotion, representing as they did an early guilty verdict against the highest echelons of the former secret service.			
4) Murders of Manuel Guerrero, Santiago Nattino and José Manuel Parada **["Degollados" case]**	31.030-1994	Supreme Court	27/10/1995	Santiago Nattino, José Manuel Parada and Manuel Guerrero were fellow Communist Party activists. José Manuel worked at the Catholic Church human rights defenceorganisation theVicaría de la Solidaridad, while Manuel Guerrero was a secondary school teacher and union organizer. All three were active and known opponents of the dictatorship. They were illegally detained by agents of DICOMCAR, the intelligence arm of the *Carabineros* police service, on 28 and 29 March 1985. Their bodies were found on 30 March, close to the road connecting Santiago'sQuilicuradistrict to the international airport at Pudahuel. Theirthroatshadbeencut.

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<tr><th>CASE or EVENT</th><th>CASE CODE</th><th>COURT RESPONSIBLE</th><th>DATE</th><th>CASE OUTLINE</th></tr>
<tr><td>[CONT. Degollados case]</td><td colspan="4">SIGNIFICANCE:
The Supreme Court imposed high final sentences in this case, with life imprisonment for 5 agents and high sentence tariffs imposed on 11 more. These represent the few proportionate sentences imposed to date on those found guilty in Chile of the most serious human rights violations. The only other occurrences of high sentences, including life tariffs, also date from the 1990s (the Tucapel Jiménez case, and others).
The relatively late date of commission of the crimes meant that the questions of applicability of amnesty and prescription did not apply in this case, which was notable principally for the social revulsion provoked by such a bloody atrocity during what proved to be the final half decade of the dictatorship. The crime led to the naming of a special investigative magistrate to oversee the case, an exceptional measure rarely if ever taken during the dictatorship period where, as in this case, it was evident that state agents had been involved.
The ‘degollados’ case also led to the dismissal or resignation of two heads of the police force (Carabineros).The first of these, Grl. César Mendoza, was dismissed in 1985 from the then ruling military junta after the incident. The second, his successor Grl. Rodolfo Stange, was severely criticized in the text of the final verdict, which raised questions about his role in the post hoc coverup of the crime. He refused to accede to a request from the (by then) democratic administration of 1994 for his resignation, but took early retirement the following year.</td></tr>
<tr><td rowspan="2">5) First direct criminal complaints admitted against former dictator Augusto Pinochet Ugarte

[Episodes “Caravan of Death” and “Calle Conferencia”]</td><td>2182-1998</td><td>Juan Guzmán, Special Investigative Magistrate</td><td>12/01/1998 (“Conferencia”) y 28/01/1998 (“Caravan of Death”)</td><td>These complaints were presented, just days apart, by Communist Party president Gladys Marín (for the disappearance of her husband Jorge Muñoz and four more Communist Party leaders in 1976); and by Rosa Silva, daughter of former local government official Mario Silva (murdered in October 1973 as part of the northern phase of the ‘Caravan of Death’ operation).</td></tr>
<tr><td colspan="4">SIGNIFICANCE:
These presentations became the first criminal complaints ever admitted that point directly to Augusto Pinochet as the principal party responsible for human rights crimes. They proved to be the launching pad for a new, active phase in domestic criminal prosecution of crimes against humanity.
The complaints fell by rote to judge Juan Guzmán, considered at the time a conservative figure. This plus Pinochet’s continuing social and political influence reduced expectations as to the success of the investigations (one month after the complaints were accepted, Pinochet handed over his post as army commander in chief to become an honorary senator, with parliamentary immunity from prosecution). However, when judge Guzmán began a diligent investigation of the crimes, further complaints followed. The numbers rose again after the unexpected detention of Pinochet in London in October 1998, over a case investigated in Spain by judge Baltazar Garzón. Case code (Rol) 2182-1998 was used to group together all complaints directly naming Pinochet, and over time came to be subdivided into episodes representing various incidents and victims. Pinochet was charged in various of these (see below). After Guzmán retired, and after Pinochet’s demise in 2006, investigations of the Caravan of Death, Calle Conferencia and other cases continued against other suspects.</td></tr>
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6) Pedro Poblete Córdova **[DD]**	469-1998	Supreme Court	09/09/1998	Pedro Poblete, a worker and member of the left-wing MIR movement, was illegally detained by members of the DINA secret police at the intersection of San Ignacio street and Avenida Matta in the centre of Santiago. He was taken to the clandestine detention and torture centre Londres N° 38, and later to the detention centre "Cuatro Álamos", from where he disappeared.
	SIGNIFICANCE: This verdict proved to be a major tipping point in the (re)interpretation of the 1978 Amnesty Law. In it, the Supreme Court **ordered the reopening of an investigation that military courts had closed by the application of amnesty.** The Court's view was that the investigative phase must be fully completed, and the identity of those responsible established, before amnesty could be applied. It went on to declare that the dictatorship's own interpretation, in Decree Law no.5, of Article 418 of the Military Justice Code **rendered the Geneva Conventions applicable to the period at issue**, generating the concomitant state responsibility to prevent and sanction crimes committed under a state of war The verdict implied a supraconstitutional rank for the Conventions, making reference to Article 5 of the 1980 Chilean Constitution. Article 5, as amended in 1989, states that domestic law must always be in accordance with international standards of protection of essential rights. This position represents a high water mark in the courts' recognition of the supraconstitutional rank of international law, as the point has not subsequently been sustained with the same clarity nor with any consistency by either the Supreme Court or the Constitutional Tribunal.			
7) First *desafuero* (impeachment[1]) of Augusto Pinochet Ugarte		Santiago Appeals Court, ruling on a request from judge Juan Guzmán	06/03/2000	Guzmán's petition to be allowed to proceed with his investigation of Pinochet (an honorary senator) was referred to a full sitting of the court, which on 23 May 2000 approved the *desafuero.* This step paved the way for the bringing of charges against Pinochet in the 'Caravan of Death' case (see below). The *desafuero* was approved by a 13 to 9 majority of the Appeals Court judges.

[1]The term 'impeachment' is not an exact translation. *Desafuero*is the process of removal of the extra layer of protection from legal action that parliamentarians, some military officers and certain other public figures acquire by dint of their office, to protect them from frivolous or mischievous claimmaking. It can be challenged or removed through a judicial or parliamentary process where strong indications of wrongdoing exist.

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[CONT. Pinochet desafuero]	**SIGNIFICANCE:** The first of various removals of Pinochet's legal protection as a sitting senator. (The removal is only valid for the specific investigation for which the application was made, and the process must be repeated for any subsequent cases). This is a necessary step before legislators and other public figures may be fully investigated or charged over alleged criminal behaviour.			
8) First *procesamiento* (bringing of charges)[2] against Augusto Pinochet Ugarte		Judge Juan Guzmán	01/12/2000	Judge Guzmán emits the first declaration of charges (*auto de procesamiento*) against Pinochet, as co-author of the kidnapping (forced disappearance) of 19 people and the murder of 55 more, in the context of the episode known as the 'Caravan of Death'.
	SIGNIFICANCE: Although this was the first bringing of charges, it did not stand for long. It was revoked for procedural reasons by the Appeals Court, and the revocation was later ratified by the Supreme Court.			
9) First round of designation of special investigative magistrates for human rights cases		Supreme Court	20/06/2001	The Supreme Court designated 9 senior judges to work exclusively and 51 more to work 'preferentially', on dictatorship-era human rights cases including 114 cases of forced disappearance. The designations were renewed and expanded in 2002 and 2004, and from 2010 a Supreme Court judge was named to coordinate progress in such cases. By this time all human rights case judges were of senior rank, however, the exclusivity of their appointments had been removed and all were simultaneously carrying out regular duties in their respective Courts of Appeal.

[2]Bringing of charges is not an exact equivalent of *procesamiento*, which takes place at a slightly earlier stage of the investigation. *Procesamiento* in effect declares the subject to be a 'person of interest' to the investigation. It implies a founded presumption on the part of the investigative magistrate that, given the evidence amassed to date, the individual will finally prove to have had some culpable part in the crimes under investigation. Its prerequisites include a formal sworn statement by the relevant individual.

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10) Case of Miguel Ángel Sandoval Rodríguez **[DD]**	517-2004	Supreme Court	17/11/2004	Miguel Ángel Sandoval was a young tailor, and a member of the left-wing MIR political movement. He was illegally detained on 7 January 1975 by agents of Chile's DINA secret police. He is believed to have been taken to the Villa Grimaldi clandestine detention and torture centre, from where he was forcibly disappeared. His whereabouts remain unknown.
	SIGNIFICANCE: A first instance verdict initially emitted by judge Alejandro Solís, and later confirmed by the Santiago Appeals Court and by the Supreme Court, **affirms that the crime of aggravated kidnap is equivalent to the internationally defined crime of forced disappearance.** The verdict rejected the application of amnesty or statutes of limitation to an **ongoing crime**, one that continues to be perpetrated while the victim remains missing. . The verdict reinforced the reasoning used in the Poblete Córdova case (see above), by which the dictatorship rendered the Geneva Conventions applicable when it passed Decree Law N°5, citing article 418 of the Military Justice Code. This case represented the **first conviction of Manuel Contreras for kidnap**, and produced the first new imprisonment of the former secret police chief after his relatively short 1995 sentence for the Letelier assassination. Notification of this new verdict against Contreras produced **confrontations and protests outside the central court building in 2005,** as a result of which procedures were changed to minimize 'disruption' from human rights cases.			
11) Case of Ricardo Rioseco and Luis Cotal (Temuco) **[Victims of Extrajudicial Execution]**	457-2005	Supreme Court	04/08/2005	Ricardo Rioseco, a 22 year old student at Santiago's State Technical University (Universidad Técnica del Estado), was jointly accused with 15 year old Luis Cotal of supposed 'terrorist acts'. They were extrajudicially executed in the southern town of Angol. Their bodies were hidden after the crime.
	SIGNIFICANCE: **This case represented a setback in jurisprudence,** as the verdict refused to acknowledge the *ius cogens* character of international human rights law in relation to the inadmissibility of statutes of limitation. The Court **did not accept the thesis of a prevailing state of internal armed conflict,** and applied the statute of limitation to the murders. This was a 3-2 majority verdict. The two dissenting judges, Cury and Rodríguez, were of the view that dictatorship-era authorities could not now step back from their own contemporaneous declaration of a state of internal war for the sole purpose of evading criminal responsibility for their subsequent actions.			

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12) Death of Augusto José Ramón Pinochet Ugarte- 10 December 2006	The demise of the former dictator produced the automatic suspension of the human rights cases and corruption investigation (Riggs case) that were open against him at the time of his death. Nonetheless, the cases continued against other suspects. The Riggs case was concluded in July 2013 with no charges brought.			
13) Adverse Inter-American Court ruling vs Chile: Almonacid case	N/A	Inter-American Court of Human Rights	26/09/2006	Complaint ref 12.057 was lodged with the Inter-American Human Rights Commission on 15 September 1998, alleging denial of justice by the State of Chile, in contravention of Arts 8 and 25 of the American Convention on Human Rights ('Pact of San José) in the case of the September 1973 murder of Luis Almonacid Arellano. The case had been suspended by a military court through application of the 1978 amnesty Decree Law. The 2006 verdict found Chile to be in contradiction of its international obligations, declared the amnesty decree law to be 'without legal validity' and ordered that it not continue to impede investigation and sanction of this and similar crimes.
	SIGNIFICANCE: This first adverse ruling against Chile in the regional court for dictatorship-era crimes was part of a series in which the Interamerican Court has taken an increasingly clear line against self-amnesty laws passed by or in the wake of authoritarian regimes (see also Barrios Altos vs Peru, 14 March 2001). The Almonacid case has been taken up and widely cited by other domestic tribunals in the region, and was the inspiration for (as yet unsuccessful) attempts to bring prosecutions for 1970s torture crimes in Brazil in 2012. In Chile, although then Supreme Court president Enrique Tapia described the verdict as not binding, the first relevant Appeals Court verdict after Almonacid refused to apply gradual prescription and raised sentences from 4 to 10 years (case for Mario Carrasco and Víctor Olea). Since 2006 the ruling has gradually been taken up and cited positively by domestic courts in Chile. As of 2013, however, the state was still in breach of its obligations having failed to keep a subsequent promise to bring the 1978 amnesty law in line with international obligations through legislation. The domestic investigation into the death of Mr. Almonacid was reopened, and concluded on 29 July 2013. The perpetrator was granted gradual prescription and given a non-custodial, four year sentence for murder.			

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14) Case of Hugo Vásquez y Mario Superby	559-2004	Supreme Court	13/12/2006	
	SIGNIFICANCE: A significant jurisprudential advance by which for the first time a case of **extrajudicial execution was treated as a crime against humanity** (all previous cases in which this classification was accepted had been cases of forced disappearance). The case was also the first one in which the bench positively cited the **2006 Inter-American Court verdict** against Chile in the **Almonacid case.**(Corte IDH, Almonacid vs Chile, 26 September 2006, parrs. 96 y 99 The verdict also cites Article 1 of the Convention on the Imprescriptibility of War Crimes and Crimes against Humanity.			
15) Caso Juan Luis Rivera Matus ***[DD]***	3.808-2006	Supreme Court	30/07/2007	Retrograde step: This was the first of an almost unbroken series of verdicts (until 2012) in which the Supreme Court **substantially reduced final sentence tariffs through the application of 'half prescription' or half statute of limitations.**(Article 103 of the Criminal Code). The Court defended the applicability of half prescription, despite its own recognition that prescription cannot be applied, by arguing that the two figures did not share the same juridical essence. It classed prescription as a figure extinguishing criminal responsibility, and acknowledged that this is ruled out in cases of war crimes or crimes against humanity. However, it **classified half prescription as a mitigating circumstance**, accordingly treated as applicable in these cases. This interpretation was rolled back after court personnel changes in 2012.

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[CONT/ Caso Juan Rivera]	**SIGNIFICANCE:** The application of half prescription reduces the final sentence tariffs for defendants to the point where the majority of these are eligible to apply for**sentencing benefits such as supervision orders (libertadvigilada).**These constitute non-custodial sentences. Over the subsequent period while this interpretation prevailed, **two thirds of all finally convicted** perpetrators had their sentences reduced to non-custodial length (tariffs below five years are eligible for alternative sentencing applications, routinely granted in human rights cases).			
16) Case 'Episodio Parral'	3.587-05	Supreme Court	27/12/2007	A case investigating the disappearance of 28 people. 26 of the victims were peasant farmer; one, a doctor, and the final one, a legal minor.
	SIGNIFICANCE: In this verdict the Supreme Court emphasised that the crimes of kidnapping and abduction of minors (Articles 141 and 148 of the Criminal Code) are ongoing, and therefore cannot be amnestied. Nonetheless, the Court revoked the lower court sentence **on the grounds that half prescription (prescripción gradual) had not been conceded to the accused.** The Court handed down alternative, much more lenient, sentences.			
17) Case of Jacqueline Binfa Contreras ***[DD]***	4.329-2008	Supreme Court	22/01/2009	**A major setback,** in which the Supreme Court revoked the guilty verdict previously imposed by judge Alejandro Solís on the perpetrators of the aggravated kidnap (forcible disappearance) of Jacqueline Binfa. The verdict was handed down with a special temporary court composition that proved particularly unfavourable for human rights case verdicts.
	SIGNIFICANCE: In this verdict the criminal bench of the Supreme Court in effect attributed sub-constitutional rank to international human rights law. The court argued that dispositions of international law could not modify constitutional principles regarding **legality, non-retroactivity or the classification of crimes.** It held that internal legal dispositions should take precedence over all international legal considerations. The court also **ruled the Geneva Conventions inadmissible**, on the grounds that **they did not find that it had been proven that at the date of the crime a state of internal conflict prevailed in Chile** of the type that would render applicable Article 3 of the Geneva Conventions (the article relating to non-international armed conflicts)			

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18) Case of the Vergara Toledo Brothers ***[victims of extrajudicial execution]***	7.089-2009	Supreme Court	04/08/2010	Brothers Rafael y Eduardo Vergara Toledo, aged 18 and 16, were both activists belonging to the MIR left wing political movement. They were shot at point-blank range by police officers during street protests in the working-class Santiago district of Villa Francia on 29 March 1985. The case gave rise to an annual commemoration, known as the 'Día del Joven Combatiente', which often produces violent confrontations with the police in marginalized working-class districts of the country. The case was supposedly 'investigated' by the military justice system in the 1980s, but no criminal sanctions were imposed against those responsible.
	SIGNIFICANCE: The Supreme Court classified the crimes in 2009 as crimes against humanity, dismissing the pseudo investigation carried out by the military justice system of the day as a **"mere simulation of a trial"**, one which in the judgment of the Court contravened the applicable Article 413 of the Criminal Procedural Code insofar as it was neither complete and sufficient, nor lawful. The Court ruled out the **double jeopardy defence**– which rules out trying a person twice for the same crime - on the grounds that the requisite 'dual identity' principle was not fulfilled. Under this principle, the two attempted trials would need to be identical in terms of a) the specific crimes or criminal charges involved and b) the identities of the accused. The Court ruled that in this case neither condition obtained, given the little or no advance that was made in the initial investigation. The Court also invoked **Geneva Convention IV** in order to explain the inapplicability of statutes of limitation. Nonetheless, half prescription (half statute of limitation) was allowed, under the reasoning already discussed (see discussion of Rivera Matus case, above)			
19) Change in the presidency of the Supreme Court	N/A	Supreme Court	06/01/2012	In the course of the regular rotation of the Supreme Court presidency, judge Rubén Ballesteros Cárcamo was chosen by his peers to replace outgoing court president Milton Juica. The changeover was resisted by human rights groups who pointed to Ballesteros's membership of a specially-convened Council of War which had imposed summary sentences in 1973 and 1974; as well as to his well-known sympathies with the regime and his advocacy of the continued application of amnesty to human rights cases.

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[CONT. Change Supreme Court Presidency]	**SIGNIFICANCE:** This change proved to be more relevant even than was initially suspected, since the seat on the criminal bench that was vacated by judge Ballesteros on his promotion was eventually occupied by judge Juica, much more progressive in regard to human rights law.Judge Juica had been associated with a relatively liberal line in favour of the prosecution and punishment of dictatorship-era crimes. As investigate magistrate responsible for the 'Degollados' case, Juica applied weighty sentences to those responsible. He was known as an opponent of the half prescription thesis. The arrival of Juica and fellow new criminal bench Haroldo Brito to join existing member judge Künsemüller, tipped the balance in early 2012 toward weightier penalties as the automatic application of half prescription was halted. (See below, Rudy Cárcamo case). This progressive tendency was not sustained over time, though: half prescription was granted again in disappearance cases in November 2012 and July 2013 (Grober Venegas case, ref 3573-2012, and Cecil Alarcón case, ref 64-2009, respectively). The bench however became much more likely to award civil damages, rejecting the argument (accepted, however, by the Constitutional bench and by the full Court) that these are not subject to the same ban on statutes of limitation that apply to criminal charges. Judge Ballesteros handed over the presidency in early 2014, and will eventually rejoin one of the Court's regular benches. He was replaced by judge Sergio Munoz, the youngest candidate to occupy the presidency for over a century. Judge Munoz was formerly the coordinator of human rights cases for the Supreme Court, and during his time on the Santiago Appeals Court investigated several well-known cases, becoming known and respected as a tenacious and capable investigator.			
20) Case of Rudy Cárcamo ***[DD]***	288-2012	Supreme Court	24/05/2012	First verdict emitted by the new criminal bench lineup
	SIGNIFICANCE: This verdict was notable in at least three aspects i) It upheld the **applicability of the Geneva Conventions**, ratified by Chile in 1951 ii) It treated the forcible disappearance (kidnap) of Rudy Cárcamo as a crime against humanity iii) It ruled out the application of half prescription **(*prescripción gradual*),** by implication recognising that the figure shared its essence with that of full prescription, ruled inadmissible for cases of grave violations according to prevailing international law. This represents the first forced disappearance case since 2007 in which the Court did not apply half prescription (prescripción gradual) to reduce sentences. In later sentences, the court even increased sentence tariffs where it felt that lower courts had been unduly lenient.			

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21) Case of the murder of Gloria Stockle Poblete	2.200-2012	Supreme Court	21/09/2012	Gloria Stocklewas raped and murdered in 1984 by soldiers, after attending a social event in a military canteen
	SIGNIFICANCE: A case whose appeals court stage was dealt with by the Copiapó Appeals Court, the same one which had dealt with some early charging for the crime back in 1992. Despite the fact that the victim's name is included in the 1991 Rettig truth commission report as a victim of political violence, the 2012 verdict appears to step back from considering this as a crime against humanity despite its date of commission – during the dictatorship – and the self-confessed involvement of state agents. Although the verdict does conclude that the case is not subject to prescription, the grounds used are that the family had first brought legal action close to the date of commission of the crime. Although there is no explicit reference to the issue of definition as a crime against humanity, it seems likely that the Court chose not to apply the category to this crime. Since the participation of state agents –one of the necessary constituents – is beyond doubt, the court seems to have decided that the characteristics of systematicity and/or political motivation were missing or lacking definition. Certain aspects of the case instead seem to make it arguably a **common crime** carried out by individual military personnel, albeit within a general context of impunity provided by the prevailing political situation. In any case it is notable that the verdict chose not to convict for the crime of sexual assault despite this having been admitted to by the perpetrators.			
22) Case of Grober Venegas Islas ***[DD]***	3.573.2012	Supreme Court	22/11/2012	Grober Venegas Islas, a 43-year-old man with no known political affiliations, was last seen at the detective police (PDI) headquarters in the northern desert city of Arica in late May 1975. He had been taken there on suspicion of drug dealing. He was later removed from the police headquarters by army personnel from the Regional Intelligence Centre (Centro de Inteligencia Regional, CIRE). Grober was taken to the CIRE headquarters in Avenida Diego Portales, in Arica, and later taken inland to the Azapa Valley, from where he disappeared.

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[CONT. Case of Grober Venegas Islas]	**SIGNIFICANCE:** This verdict was the first since 2004 in which the Court did not recognise the permanent nature of the crime of kidnap in a case of forced disappearance. It designated an essentially arbitrary cutoff period of the 91st day after the disappearance as the date of completion of commission of the offence, for the purposes of calculating the lapsing of the statute of limitation, or, for purposes of reduced sentencing, of half of that period. Full prescription (statute of limitation) was not however conceded, suggesting that the crime therefore continued to be considered punishable by virtue of its nature as a crime against humanity, (since it was no longer classified as an ongoing offence). It may be significant that the majority (3-2) verdict was carried by the voted of two career lawyers (abogados integrantes), who sit on the Supreme Court bench as occasional replacements for permanent judges during temporary absences. The pair in question, Emilio Pfeffer and Jorge Lagos, are known for their conservative views on this issue, Pfeffer particularly so. The third vote in favour of applying sentence discount through invoking 'half prescription' came, as has become usual, from Judge Dolmestch, generally considered to have developed the notion from 2007. The result was a non-custodial sentence in the criminal part of the case. However, although Pfeffer and Lagos also voted to reject a relatives' claim for civil damages, Dolmestch on this occasion voted with the other two permanent judges and the moral damages award was conceded. This new tendency to disallow the permanent crime thesis in disappearance cases persisted in the bench's subsequent verdict on the same issue, in the Cecil Alarcón case (Rol 64-2009, 18 July 2013). On that occasion, the bench similarly allowed the damages claim, adding that in its view administrative and judicial routes to reparations were not mutually exclusive (and therefore to be in receipt of a reparations pension did not prevent relatives or survivors suing for damages in court).			
23) Resolution by a full sitting of the Supreme Court on time constraints in civil claims	10665-2011	Supreme Court	21/01/2013	A full sitting of the Supreme Court declared the statute of limitations applicable to the civil damages aspect of joint criminal and civil cases for crimes against humanity. The finding reversed a USD 106,000 damages award the Appeals Court had previously made to the sister of doctor Eduardo González Galeno, forcibly disappeared since 14 September 1973. The court accepted the state's contention that statutes of limitation, though ruled out in criminal proceedings for crimes against humanity, can be applied to the civil liability aspect of the same case. Judges decided that the statute of limitations clock should run in this case from 1991, the date of publication of the Rettig truth commission report and the earliest date at which, by their reasoning, Dr. González's relatives could have initiated action over his disappearance. The verdict was divided, with 9 votes in favour and 7 against. The dissenting votes came from judges Juica, Dolmetsch, Muñoz, Araya, Escobar, Kunsemuller and Brito.

CASE or EVENT	CASE CODE	COURT RESPONSIBLE	DATE	CASE OUTLINE
[CONT. Resolution by a full sitting of the Supreme Court on time constraints in civil claims]	**SIGNIFICANCE:** Potentially a significant legal setback for the judicial route to reparations, as rulings made by a full sitting of the Court (rather than only the 5 members of the relevant bench) are usually considered to signal future lines of reasoning (even though precedent is not binding.) However, many subsequent rulings by the Court's criminal bench on the matter did not follow this lead, choosing instead to uphold damages awards and signal that administrative and judicial routes to reparation should not be considered mutually exclusive. The court accepted the state's contention that statutes of limitation, though ruled out in criminal proceedings for crimes against humanity, can be applied to the civil liability aspect of the same case. Judges decided that the statute of limitations clock should run in this case from 1991, the date of publication of the Rettig truth commission report and the earliest date at which, by their reasoning, Dr. González's relatives could have initiated action over his disappearance. The verdict was divided, with 9 votes in favour and 5 against. The dissenting votes came from judges Juica, Dolmetsch, Muñoz, Araya and Escobar.			
24) Adverse Inter-American Court ruling vs Chile: García Lucero case	N/A	Inter-American Court of Human Rights	28/08/2013	On 16 September 1973, Leopoldo García Lucero was detained by Carabineros (police) and taken, in turn, to a UN building, a police station, and the National Stadium concentration camp in the Chilean capital Santiago. He was tortured and kept incommunicado throughout this time, with no formal charges or regular judicial procedure ever initiated against him. In December 1973 he was transferred to the 'Chacabuco' concentration camp in Antofagasta, and from there to the prison camps Ritoque and Tres Alamos. On 12 June 1975, he was officially expelled from Chile under the terms of authoritarian regime decree law No. 81 of 1973. He has since lived in the UK, where his wife Elena and their two children were eventually allowed to join him. In 1993, he applied to the democratic Chilean government for official recognition of his status as a so-called 'exonerado político', someone who was sacked and/or blacklisted from their job for political reasons by the Pinochet regime. His application was finally processed and approved in 2000, and he began to receive a backdated reparations pension. In 2004, he submitted testimony to Chile's second truth commission, the 'Valech Commission', which documented cases of politically motivated imprisonment and torture. His case was acknowledged by the commission.

CASE or EVENT	CASE CODE	COURT RESPONSIBLE	DATE	CASE OUTLINE
[CONT. Adverse Inter-American Court ruling vs Chile: García Lucero case]	**SIGNIFICANCE:** In August 2013 the Court found Chile to be in breach of its international obligations, in having failed to initiate, ex officio and in a timely fashion, a criminal investigation for the grave crime of torture. It indicated that the state was apprised of the possible existence of the crime at least as early as 1993, in the form of the letter sent by Mr García Lucero to the governmental exoneradospolíticos programme, and that Chile had therefore breached articles 8.1 and 25.1 of the American Convention on Human Rights (Pact of San José), with reference to article 1.1 of the American Convention and to Arts. 1.6 and 8 of the separate Inter-American Convention on the Prevention and Punishment of Torture. The Court ordered that the currently open criminal investigation, opened belatedly in 2011, should be expedited; awarded GBP 20,000 in moral damages to Mr Garcia Lucero, and recommended that the Chilean state also consider an additional voluntary payment to defray medical expenses related to the permanent disabilities which Mr García Lucero still suffers as a result of his torture. The Court however abstained from pronouncing directly on the sufficiency and content of Chilean reparations programmes, considering these to constitute part of the original harm – therefore outside of its temporal jurisdiction – and focusing instead on aspects related to the present-day guarantee of rights, eg access to justice mechanisms through which the content of reparations programmes can be challenged. In this way the Court limited the aspects of pre-1990 crimes which it is competent to consider to those which it considered 'autonomous acts', ie infractions that begin or continue to be committed after the August 1990 date on which Chile ratified the American Convention and recognised the contentious jurisdiction of the Court. Significantly – given that most past atrocity cases, and virtually all torture cases, in Chile have been brought privately by survivors – the Court reaffirmed that the state, not the victim or their relative, has the duty to investigate internationally-defined serious crimes such as torture. In this particular case the date from which this ought to have occurred was not the 2004 truth commission report – Valech Commission report – but over a decade earlier, in 1993, when Mr García Lucero wrote to a different state body for the purposes of initiating his right to reparations. (see verdict, parr. 126). One possible interpretation is that the state has been generally negligent in not taking all of the thousands of applications to this programme as evidence of a possible crime. The Court also reaffirmed increasing recognition of the interrelated and inseparable nature of the rights to truth, justice and reparations, and emphasised that the existence of reparations programmes as a matter of public policy – through the 'administrative route' – could and should not deprive victims of the right to also claim reparation through the judicial route. The full text of the verdict can be viewed at www.corteidh.or.cr, using the Jurisprudence section of the search engine.				