

## Human Rights in Chile

Summary of court cases for past human rights crimes, to end April 2010

### Introduction

The Human Rights Observatory of the Universidad Diego Portales is a joint initiative between the University's Human Rights Centre and Social Science Research Institute, supported by the Ford Foundation and the Heinrich Boell Foundation. It was set up to map current judicial activity in Chile for human rights violations carried out during the 1973 to 1990 military dictatorship, and create a database of cases presently ongoing in national courts. This bulletin provides a summary of case activity and other justice-related developments, based on information supplied by the Human Rights Programme of the Chilean Interior Ministry as well as on open sources and additional research.

### CASE STATISTICS

**The Observatory is pleased to report that after a period of internal adjustments following February's change of government, the Human Rights Programme of the Chilean Interior Ministry is working to resume its previous rhythm of supplying monthly case statistics to national academic institutions on the 10<sup>th</sup> of each month. For the present, bulletin dates have shifted to accommodate the changeover period, and summary statistics are necessarily approximate until new data checking systems are perfected. Human Rights Programme staff changes following the recent Chilean election have included replacement of its Executive Secretary and head of legal team. The Observatory would like to thank the outgoing postholders for their invaluable assistance in the initial stages of the bulletin project.**

### Cases and Victims

Interior Ministry Human Rights Programme data showed 350 investigations (cases) ongoing in Chile at end April 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between 1973 and 1990. This caseload represents just over a third of known victims of death and disappearance\*, while around 59% had no case in progress.

### New cases

The proportion of victims with no open legal case has dropped (from 63% in bulletin 5) due to new cases brought by relatives and lawyers in February and March 2010. Programme records show cases opened or reopened regarding 46 additional victims in April. In the same period, sentences were pronounced in existing cases regarding 4 victims (3 of whose cases produced guilty verdicts, while 1 case produced a not guilty verdict)

*\* Official numbers for deaths and disappearances in Chile between 1973 and 1990 remain at 3,195. This total should however be revised downwards, as here, to 3,186, to reflect errors discovered in 2008 and 2009 in official registers*

## **Agents (Repressors)**

Interior Ministry Human Rights Programme data at April 2010 showed approx. **779** former security service agents charged and/or sentenced in Chile for past human rights related crimes (including 15 with absolutions currently under appeal). **64** of these are serving confirmed custodial sentences, at least **44** in the Punta Peuco military facility. An estimated **143** agents with confirmed sentences escaped serving prison time due to the concession of benefits such as house arrest or suspended/reduced sentences (*see below, sentence reduction via the use of 'half prescription'*)

## **Sentences**

Between 2000 and Feb 2010, **approx. 287\*\*** former security force agents had received a total of 517 condemnatory sentences for dictatorship-era HRV crimes in Chile. At least 209 of these agents have had one or more of their sentences confirmed by the Supreme Court.

*\*\* Exact figure subject to confirmation of discrepancies between existing summary and breakdown data*

This figure represents the highest single total of former repressors sentenced for these crimes anywhere in Latin America. In Argentina, where 77 former repressors have to date been sentenced, only two are currently serving confirmed custodial sentences (*Source CELS Argentina, see [www.cels.org.ar/wpblogs](http://www.cels.org.ar/wpblogs)*)

## **TRENDS IN SENTENCING**

### **Sentence reductions in criminal cases: the recent use of 'half prescription' by the Chilean Supreme Court\***

Chile's present total of 64 individuals serving jail time for human rights crimes contrasts with the much higher number – over 200 – who have in fact been handed confirmed final sentences by the Supreme Court. The discrepancy is due to the Supreme Court's increasing use over the past three years of the legal figure of 'half prescription'. This provision, set out in Article 103 of the Chilean Penal Code, allows for the use of a sliding scale to reduce sentences where more than half the original statute of limitations period for the offence has already expired by the time sentence is passed.

The application of this particular provision to sentences for crimes against humanity seems particularly contradictory as the same Supreme Court also explicitly recognises that, according to international law, crimes against humanity are 'imprescriptible', ie not subject to statutes of limitation. Accordingly, the computation of half of the original prescription period, required to trigger the application of Article 103, cannot logically be made in these cases. Additionally, the wording of the provision suggests

that it is intended for use where the suspect is a fugitive from justice who has only recently been located, a circumstance which does not apply to these cases.

The invocation of 'half prescription' in favour of those found guilty of crimes affects the calculation of final sentencing: it allows the court to admit two or more mitigating circumstances and prevents it from applying the more severe levels of penalty reserved for 'aggravated' offences. Its practical effect to date in human rights cases has been to reduce sentences to an average of 5 years or under, a level which in turn triggers the possibility for the sentence to be suspended and replaced by the conceding of benefits such as parole or dissolution of the sentence. The overall effect has been to produce low sentences not commensurate with the gravity of the offences committed, an outcome that has produced frustration and re-victimisation for relatives and other case bringers.

The Court has applied the measure to 48 of its 71 most recent verdicts in cases for human rights violations, awarding 96 perpetrators benefits amounting to the cancellation of prison time.

*For a fuller analysis of half prescription see K. Fernandez and P. Sferraza (2009), La aplicación de la prescripción gradual del delito en las causas sobre violaciones de derechos humanos Anuario de Derechos Humanos, Nº 5, Santiago; Centro de Derechos Humanos de la Universidad de Chile (pp.183-192) (Spanish only) Downloadable at <http://www.cdh.uchile.cl/publicaciones/anuarios/anuario2009.tp/>*

## **CIVIL CLAIMS**

A detailed report by UDP Human Rights Centre researcher and Observatory team member Mayra Feddersen dealing with recent trends in the differential treatment of compensation claims by the civil, as opposed to criminal, bench of the Chilean Supreme Court is now available (in Spanish only) on the project web pages at section Publicaciones and Actividades. See <http://www.icso.cl/publicaciones-y-actividades>

## **Other news from Chile**

### **Subsecretary of Defence cited as a witness in the Victor Jara case**

On 17/18 May, former Army Commander in Chief and recently named Subsecretary of Defence Oscar Izurieta was cited to testify as a potential witness in the 1973 assassination of noted Chilean folk singer Victor Jara. The case has long hinged on discovery of the real identity of an official known by the nickname 'El Principe', identified by many survivors as responsible for systematic torture and killings carried out at the 'Estadio Chile' detention centre to which Victor Jara and many other detainees were taken in the immediate aftermath of the 1973 coup. A motion to close the case in 2008 led instead to its reactivation when Victor's widow Joan Turner, a British citizen, requested new measures. These led to the exhumation of Jara's body and the bringing of charges against a former conscript who claimed he had been forced to participate in a macabre game of Russian roulette resulting in the singer's death.

The citation of Izurieta, based on the mention of his name by another witness, was decreed by the Santiago Appeals Court in response to a petition to this effect by lawyers involved in the case. This kind of petitioning for specific new investigative activities is routine in Chile's

old, inquisitorial, criminal justice system under which all dictatorship-era human rights cases are still seen. On this occasion, however, the petition sparked controversy for having been made by lawyers from the Human Rights Programme of the Interior Ministry, rather than private human rights lawyers representing relatives in the case.

In the ensuing political row, new Programme head Rossy Lama was reported in the press as having attributed the measure to the failure on the part of the lawyers involved to respect a new internal procedure requiring Programme lawyers to submit all draft case petitions for central approval. This new requirement in turn attracted criticism from relatives' associations and Jara family members, who expressed concern that Programme lawyers might thus appear to be increasingly vulnerable to political pressure over decisions that ought to be made on strictly legal grounds. In this instance, the court's decision to accept the petition suggests that it was found to be both legally correct and pertinent. No date has yet been set for the witness hearing.

### **'Vetting' and social repudiation**

The previous edition of this bulletin (Bulletin 5, April 2010) reported the aborted appointment of former police intelligence officer Iván Andrusco to head Chile's national prison service. In late April, Andrusco was made the object of a private criminal complaint (*querrela*), submitted to the courts by a torture survivor who believes she recognised Andrusco after seeing TV coverage of his 16 April resignation.

### **Colonia Dignidad founder dies in prison, aged 88**

Former Nazi junior officer Paul Schaefer, a German immigrant and founder of the notorious 'Villa Baviera' colony in the south of Chile, died in prison on 24 April 2010 while serving sentences for aggravated homicide, arms offences and child abuse. Between 1961 and 1990 Schaefer built up a network of influential right-wing contacts and protectors centred around Colonia Dignidad, a 16,000 hectare personal fiefdom with hundreds of residents, many of German origin. Schaefer fled the colony in 1996 after young former residents accused him publicly of sexual abuse. He was extradited from Argentina in 2005 and charged with a mixture of sexual and human rights-related offences. Searches of the colony after Schaefer's initial disappearance revealed caches of arms and security forces documentation from the dictatorship period. Survivors and other witnesses had long suggested that the site had been used as a detention and torture centre during the 1970s and 1980s, and may have been connected with the 1985 disappearance of US resident and university professor Boris Weisfeiler while hiking in the area. Dr Weisfeiler's sister and nephew recently submitted his case for re-consideration to Chile's new classification commission, which is revising official lists of victims of death and disappearance (see Bulletin 5, April 2010)

### **Documentation Centre and Online Library of the Museum of Memory and Human Rights**

Chile's Museum of Memory and Human Rights launched its online library and documentation centre on 29 April. The Centre contains a small physical collection and attends queries from researchers, school groups and the general public on the main museum site. The online library offers a general search engine (in Spanish only) and access by collection, theme, donor and original source to a portion of the Museum's large collection of original documentation, press cuttings, videos, soundtracks and photographs. The collection can be accessed via <http://www.bibliotecamuseodelamemoria.cl/>

## Memorialisation

On 30 April, recovered former clandestine detention and torture centre José Domingo Cañas, in the Nuñoa district of the capital Santiago, was officially inaugurated as a memory site under the administration of the Fundación 1367, a civil society grouping made up of relatives, survivors and activists. The group had campaigned since 2000 for the recovery of the site, carrying out weekly candlelight vigils and installing a roadside monument to victims.

The site was initially used as a refuge by Chileans fleeing persecution in the early days after the 1973 coup, thanks to the intervention of the government of Panama who had the building declared an extension of Embassy territory. However, it was later commandeered by the DINA secret police and turned into an operations centre known as the 'Cuartel Ollagüe'. 53 illegally detained and later disappeared individuals are known to have been held at the site, most of them activists of the left-wing *Movimiento de Izquierda Revolucionaria*, MIR. After being used for a time as a children's home, the building was finally returned to its original owner who sold it in 2000 to toy company Rochet. The original construction was demolished in 2001, in defiance of an order declaring it a National Monument. State funding approved under Chile's outgoing Concertación government nonetheless returned the site to state ownership and financed the development of an architectural project and meeting centre, to be administered by the current Fundación at least until 2020. For details and images of the site see [www.fundacionjosedomingocanas.cl](http://www.fundacionjosedomingocanas.cl) (Spanish only)

## Reparations scholarships under investigation

Study scholarships made available to survivors of torture and political imprisonment as part of a reparations package following Chile's 2003/04 Valech Commission report ([www.comisionvalech.gov.cl](http://www.comisionvalech.gov.cl)) came under scrutiny in April 2010, after beneficiaries complained that the courses they were offered by private universities were not delivering the expected degree-level qualifications. Under the terms of the scholarship agreements, a limited number of institutions were authorised to receive state funding for mature students named in Valech Commission lists as survivors of dictatorship-era human rights violations. The Education Commission of Chile's Chamber of Deputies is currently investigating whether the courses delivered effectively met the terms of the initial funding agreements.

## NEWS FROM THE REST OF THE REGION

### Argentina

Efforts by Argentine relatives' and human rights groups to open national investigations into Franco-era crimes in Spain, using universal jurisdiction principles, failed to convince Argentine state prosecutor Federico Delgado, who submitted an unfavourable resolution to the relevant national court on 30 April. Delgado pointed out that, although universal jurisdiction principles would permit the move where the home state had failed to exercise its prerogatives and duties to punish crimes against humanity, in practice there are various cases currently before the Spanish courts for these crimes. Against the argument that the Spanish amnesty law of 1977 prevents punishment, Delgado reminded the petitioners that under international law, domestic amnesty is not applicable to the particular crimes they wished him to investigate; as these constitute crimes against humanity. Delgado concluded that opening an investigation in Argentina would be 'one illegal act to remedy a greater one', therefore on balance a step backward for international human rights law.

Early May saw charges brought against dictatorship-era Minister of the Economy José Alfredo Martínez de Hoz. The charges were ordered by federal judge Norberto Oyabide, in the course of an investigation into the kidnapping and extortion of businessmen Federico and Miguel Gutheim in 1976. The two men were imprisoned in order to force them to renegotiate

an overseas business contract. Martínez de Hoz is presently under a detention order in a clinic, and has applied to be granted house arrest.

Also in early May, two new trials began outside the Argentine capital. One, in the Chaco province of Argentina, is the first trial ever held in that province for this type of crime. The second new trial, taking place in the city of Mar del Plata in the Greater Buenos Aires district, is the first case to classify sexual offences as a crime against humanity.

These cases bring the total of trials currently ongoing before Argentine courts to 9. Seven are at the oral hearing stage while two more, which are being seen under the old investigative magistrate system, are at the final written verdict stage. For more details see the CELS trial blog at [www.cels.org.ar/wpblogs](http://www.cels.org.ar/wpblogs). The blog has English and Spanish language options and offers an overview of the legal status of 1,426 former Argentine security agents currently involved in judicial processes as well as session schedules and day by day reporting of ongoing trials for crimes against humanity committed in the clandestine Buenos Aires detention centres ESMA, Club Atlético, Banco, Olimpo and Vesubio.

### **Brazil**

On 29 April, Brazil's Supreme Court ruled by 7 votes to 2 to reject a 2008 petition from the Brazilian Federal Bar Association that would have limited the applicability of the country's 1979 Amnesty Law (see Bulletin 5, April 2010 for details). The 11-member court includes former lawyer Eros Grau, himself detained and tortured during Brazil's 1964-85 military dictatorship for undertaking the legal defence of victims of human rights violations. Grau nonetheless voted the petition inadmissible, citing Chile as an example to support his contention that only the legislative branch has the power to alter amnesty legislation once in place. Supreme Court president Cezar Peluso also voted to reject the petition, arguing that although "no judge can do other than repudiate the crimes carried out under our state of exception", each country had to resolve these issues in its own way and Brazil had opted for the path of "harmony" (*concordia*). Judge Cármen Lúcia, another of the 7 majority voting judges, reminded the court that Brazil's amnesty law had been the result of generalised social pressure and had been debated at the time by a wide range of social actors, including the present petitioners. She expressed the view that a law could not be re-interpreted 31 years on. Judges Ayres Britto and Ricardo Lewandowski nonetheless submitted a minority vote that would have accepted the petition, while two more judges gave a mixed vote supporting some of its elements.

Hearings took place at the InterAmerican Court of Human Rights on 20 and 21 May in the 'Araguaia' case (case 11.552), alleging denial of justice over the disappearance and/or deaths of 70 guerrilla movement members in the early 1970s at the hands of Brazilian security forces. The complaint was submitted to the Inter-American Commission in 1995 by national human rights and relatives' groups and regional NGO CEJIL (the Centre for Justice and International Law), and represents the first case of its kind against Brazil to be elevated to the Court (in 2001). The final verdict is expected to take another 6 months, and if unfavourable could represent a diplomatic setback to Brazil's ambitions on the international stage, including at the UN.

### **Peru**

According to data supplied by Peru's Ministerio Publico (state prosecution service) to the Inter-American Commission of Human Rights in November 2009, to that date 960 of an estimated total of 1,600 cases for human rights violations committed in the context of political violence between 1980 and 2000 had been archived (effectively, suspended or shelved). Human rights organizations and Peru's official Ombudsperson's office have

attributed many of these suspensions to the refusal or failure of the Ministry of Defence to supply information that would allow definitive identification of suspected perpetrators.

On 26 April Peru's Sala Penal Nacional absolved three military agents and a police officer of responsibility in the 1986 detention and disappearance of Martín Escriba Pillaca, Melchor Tineo Perez, Seferino Quispe Pillaca and Albino Quino Sulca in Ayacucho. This absolution continues a recent trend in which the Sala has not emitted a guilty sentence in any of the human rights cases it has seen since 2008.

The trial of a total of 29 former high-level Peruvian officials accused of membership of the notorious 'Colina Group' continues. The group was a secretive 'anti-subversion' unit that carried out kidnappings and assassinations during the 1990s, including the 1991 'Barrios Altos' massacre for which ex-president Alberto Fujimori is currently serving a 25-year prison sentence. During hearings in late April in the current case, former presidential security adviser Vladimiro Montesinos denied any involvement in the crimes. Montesinos is on trial together with former Armed Forces joint commander Nicolás Hermoza Ríos, who during Fujimori's trial in 2008 and 2009 recanted previous testimony to insist that the former president had not been aware of the group's illegal activities. Montesinos, for his part, is presently serving sentences for a series of prior convictions; including a 20 year sentence for arms trafficking. On 7 May, an additional case was brought against Montesinos, Hermoza Rios and other Colina group members for the 1992 disappearance of trades union leader Pedro Huilca Tecse.

6 soldiers, including some generals, are currently on trial for the forced disappearance of 2 students from the National Central University in Huancayo. The Ministerio Publico has recommended that the same suspects also be charged over the disappearance or assassination of 72 more students from the same university between 1989 and 1993. The case is due to be referred to the Lima courts shortly.

## **Uruguay**

Montevideo's 15<sup>th</sup> annual 'Silent March' took place on 20 May. The march is organised by relatives of victims of disappearance to draw attention to their ongoing demands for truth and justice, and the date commemorates the anniversary of the 1976 assassination in neighbouring Argentina of exiled Uruguayan congressmen Zelmar Michelini y Héctor Gutiérrez Ruiz. An estimated 10,000 people took part in the march, with president José Mujica reportedly making an appearance during the course of the event. Relatives' groups in Uruguay are also awaiting results of forensic examination of remains believed to be those of a victim of disappearance. The recently-discovered remains were sent to Argentina for DNA testing. Further details are being withheld until the results have been communicated to relatives.

## **Spain**

On 24 April, supporters of beleaguered Spanish judge Baltazar Garzón held rallies in various cities across Spain to protest against his subjection to disciplinary and judicial proceedings (see Bulletin 5). In an interview with CNN, Chilean human rights lawyer Roberto Garretón emphasised the contribution made by Garzón to the recent Southern Cone revival of justice efforts, via the latter's 1990s investigations into repressive crimes in Argentina and Chile.

In mid-May, Spain's Judicial Council (Consejo General del Poder Judicial) nonetheless suspended Garzón from professional duties while investigations continue. A decision over a

request for Garzón to be authorised to join the Hague-based ICC as an advisor was delayed to allow the Council to ascertain whether the new position would afford Garzón any type of immunity from prosecution in the domestic investigation now open against him.

**Sources for this month's bulletin include:** Press reports; the Human Rights Programme of the Chilean Ministry of the Interior; CELS Argentina; Glenda Mezarobba, researcher, Unicamp, Brazil; Uruguayan lawyer Pilar Elhordoy, Chilean lawyer Karinna Fernández and Professor Jo-Marie Burt.

**Contributions to this bulletin:** Organisations with information relevant for future editions of this bulletin are invited to contact us at the mails below by the 10th of each month. Please include contact and/ or citation details.

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