

Human Rights Trials in Chile and the region

Including summary of court cases for past human rights crimes in Chile to end July 2010 (*register of prisoners serving final sentences updated to 21 September*)

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 the Observatory's own database, information supplied by the Human Rights Programme of the Chilean Interior Ministry, and additional research using open sources.

LAUNCH OF ONLINE SEARCH ENGINE FOR HUMAN RIGHTS CASES

On 2 September, the Observatory launched a new online research tool that allows public access to details of over 400 human rights related investigations currently ongoing in Chile, involving a total of almost 800 former regime agents and over 1,000 victims or survivors. A search by case, name of victim/survivor or name of agent accused provides access to the current status of the relevant investigation, the dates and reference numbers of verdicts and the name of the judge or court where the case is presently being heard. The information also includes sentencing reductions or benefits applied in the case to date, any reference made to international human rights law, and the current sentencing status and, where applicable, prison facility for agents currently charged with or sentenced for human rights crimes.

The search engine, unique in the region, was designed and commissioned by the Observatory in close consultation with relatives' and survivors' associations, human rights lawyers, journalists and other possible user groups and is designed to make the judicial process more accessible to non-specialists. The facility is now online and can be accessed via the project's web page www.icsoc.cl/observatorio-derechos-humanos, menu "Buscador de causas". The information currently appears in Spanish only.

A launch event for the new facility was held on 2 September at Chile's National Museum of Memory and Human Rights. A full house of over 100 attendees had the chance to try out the new search engine live and browse through copies of other project publications and documents (all available to download from the "Publicaciones y Actividades" menu of the project website, most available in both Spanish and English versions). After a short audiovisual presentation of the design

and functions of the new search engine, a panel debate explored the current status of human rights investigations in Chile. The panel was made up of representatives of relatives' groups, case lawyers, legal experts and the special detective force that currently investigates human rights cases in Chile. The debate opened with a greeting from judge Sergio Muñoz, outgoing coordinator of human rights investigations for the judicial branch, who emphasised the significance of Chile's present 'moment of justice' and the overarching commitment "to pursue the protection and promotion of the dignity of the human person" that should be at the heart of all state activity.

The panel debate, together with comments and questions from the floor, made it very clear that the issue of justice for human rights crimes continues to provoke vigorous debate and disagreements, and reinforced the Observatory's determination to contribute to knowledge and discussion about the merits and limitations of formal justice mechanisms. The legacy of massive human rights violations in Chile urgently requires the opening up of space for informed dialogue between all the relevant actors. The Observatory hopes to play its part with a series of initiatives that respond to these needs, based on a detailed evaluation of the present state of cases in Chile drawn from 18 months of close observation of the current judicial process.

This evaluation was recently presented and discussed at a regional meeting with representatives of human rights organisations, state prosecutors and case lawyers from Argentina, Chile, Paraguay, Peru and Uruguay. At the meeting, which took place in Buenos Aires in late August, delegates exchanged experiences and views of justice process for past human rights violations in each setting. Co-organised by CELS Argentina, the Observatory and the International Center for Transitional Justice, the event also laid the groundwork for regional mapping of current cases, using the work of CELS in Argentina and of the Observatory in Chile as prototypes for the production of data that will allow the first systematic comparative monitoring of national justice processes for past human rights crimes in the region.

ACKNOWLEDGEMENTS

The present Chilean case search engine is based on an exhaustive process of analysis of case verdicts and complementary data. The Observatory would like to thank all the sources and institutions who have supported the initiative and supplied relevant information, in particular the Ford Foundation, the Heinrich Boell Foundation, and the former and current authorities of the Human Rights Programme of the Chilean Interior Ministry. We would also like to invite potential users of the search engine to assist in keeping it up to date, by forwarding news of relevant judicial verdicts and/or observations and comments on the analysis produced by the Observatory, all of which is designed to facilitate monitoring and dialogue from and within civil society about this important aspect of justice system activity.

WORKSHOPS ON HUMAN RIGHTS CASES AND THE CHILEAN JUDICIAL PROCESS

Please take a look at our website to try out the new search engine and see more detail of the other analysis and research undertaken by the Observatory. Over the next few months, Observatory team members will be carrying out workshops with relatives' associations and other interested groups. The workshops will offer guidance on the use of the case search engine and will also offer a space to discuss the concept of strategic litigation and the benefits and limitations of formal judicialisation as part of a holistic response to the multiple truth, justice and memory challenges faced by societies in the aftermath of political violence and massive human rights violations. Mail the Observatory at observatorioddh@mail.udp.cl to find out more about the workshop series.

OVERALL STATUS OF HUMAN RIGHTS CASES IN CHILE TODAY

National-level investigation and resolution of human rights crimes has advanced notably in Chile since 1998, and has gone a long way towards reversing previous longstanding impunity for these crimes. The issue was given a kickstart in 1998 by the presentation of hundreds of new criminal complaints (*querellas*), motivated by the imminent retirement of former dictator Augusto Pinochet from the Armed Forces and his entry into the Chilean Senate, the 25th anniversary of the 1973 Chilean military coup and Pinochet's detention in London towards the end of the same year. Today around 300 individuals have been sentenced for human rights-related repressive crimes, with almost half of the sentences confirmed by the Supreme Court and 69 of those found guilty presently serving jail time.

These figures may well represent the most complete national judicial response in modern times to these kinds of crimes, in the region and possibly in the world. For purposes of comparison, it is instructive to note for example that at a similar distance after the beginning of serious efforts to prosecute crimes of state terrorism,¹ the Nuremberg trials and subsequent German court processes had judged just under 1,000 cases, with approximately 400 individuals sentenced for their part in the attempted genocide of the Jewish people and other Nazi crimes that left over 11 million people dead.

It should also be remembered that the Nuremberg trials, in their initial version, were carried out by hybrid courts applying ad hoc procedures and tailor-made penal norms, which laid them open to certain criticisms or

¹ Taking as a reference point the years 1990, for Chile, and 1946, for Germany, as dates from which it should have become possible for the first time to give more complete national judicial responses to crimes committed by the previous regime.

weaknesses regarding due process guarantees and juridical security. In Africa and other international settings, more recent uses of hybrid or transnational alternatives such as the International Criminal Tribunal for Rwanda or the ICC have been controversial and in some senses unsatisfactory.

In this sense Chile's current 'late justice' process is of interest on the international stage, as it offers one of the first modern examples of activation of an almost entirely national-level route for facing the legacy of massive human rights violations. To date, the Chilean process has been exemplary as regards guarantees and protection for defendants, leaving virtually no room for any founded criticism regarding the quality or reliability of the resulting guilty verdicts. If anything, the courts have been unduly deferent in this regard: the notable relative progress that Chile demonstrates with regard both to other settings and to its own recent past is still qualified by significant limitations. These include the fact that all recent advances have been achieved without serious challenge to the institutional and legislative framework inherited from the authoritarian past. Cases have advanced through the use of exceptions, loopholes and reinterpretations, rather than wholesale reform or 're-engineering' that could in turn have helped create a more protective climate for the full range of rights and freedoms proper to modern citizen-based democracies. In Chile, certain levels of administrative and judicial reform did take place, opening up space for renegotiation of the initial transitional pact and allowing previous truth and reparations measures to be complemented and completed with movement in the previously neglected formal justice dimension. Nonetheless, the dictatorship-era self amnesty law continues intact and judicial activity seems at times to have run ahead of the much more cautious and ambiguous signals sent by other branches of state.

The caution and moderation that has been the hallmark of the Chilean transitional process throughout is evident in the lack of clear and unequivocal official and social repudiation of the authoritarian regime and its crimes; something which in turn helps to explain the repeated surfacing of proposals for official pardons, 'full stop' laws or other means of cutting short or placing limits on the reach of the present justice phase (see below).

CASE STATISTICS FOR CHILE

Cases and Victims

According to the Observatory's database and Interior Ministry Human Rights Programme data, 456 investigations (cases) were ongoing in Chile at end July 2010 for deaths, disappearances, torture, illegal burial or conspiracy committed between

1973 and 1990. Most of these – over 350 – were at the 'sumario' stage (immediately prior to the full formalisation of charges and verdicts/ sentencing).

July's active caseload now represents 37% of known victims of death and disappearance*. 57% still have no case either in progress or concluded, and only 6% of victims are recorded as having had legal cases successfully concluded for the crimes committed against them.

** 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 3,185, to reflect errors discovered in 2008 and 2009 in official registers*

New cases

During July 2010 investigations were opened or reopened regarding 6 victims of repressive crimes committed between 1973 and 1990, namely Sonia Bustos Reyes, Jorge Herrera Cofré, José Calderón Ovalle, Luis Piñones Vega, Guillermo González de Assis and Amelia Bruhn Fernández, all victims of forced disappearance. In the same period, final verdicts were delivered against the agents responsible for 5 cases of political execution, whose victims were Sofía Cuthbert, Carlos Prats, Ricardo Reyes, Alba Ojeda and Carlos Lagos.

Over the past few months the Association of Relatives of Victims of Political Execution, *Agrupación de Familiares de Ejecutados Políticos* (AFEP) has submitted 203 new criminal complaints on behalf of victims with no active investigation open. The complaints, which are being processed by specially designated judge Mario Carroza, may come to form the basis of new cases in their own right and/or may be accumulated to existing cases, if the information currently available suggests that they form part of repressive episodes or structures that are already being investigated with regard to other victims. Since in the present judicial climate the suspension of amnesty and statutes of limitation is dependent on each crime being classified as a war crime or crime against humanity, the new complaints most likely to lead to successful investigation and sanctions are those which successfully demonstrate that the crimes they report were not isolated incidents but components of a systematic plan of repression.

A notable feature of judicial activity this month is that the Human Rights Programme of the Interior Ministry has begun for the first time to act as a litigant (*querellante*) in its own right, initiating criminal complaints instead of, as previously, only acting in an associate capacity once complaints had been brought by private individuals. This route is now open to the Programme as a consequence of recent legislation creating a National Human Rights Institute, under whose remit the Programme now falls and whose mandate more clearly permits the initiation of legal actions. The Programme's first foray into the field consists of a small group of actions on behalf of some of the same victims named by the new AFEP complaints, complementing and developing the information supplied by the private complaints in order to improve prospects of success in those cases which have most information already available or the best prospects of investigative advances.

Agents (Repressors)

According to the Observatory's database and Interior Ministry Human Rights Programme data, since 2000 and to July 2010 **777*** former security service agents had been charged and/or sentenced in Chile for past human rights related crimes (including those with absolutions currently under appeal). **69**** of these were serving confirmed custodial sentences, distributed across the following facilities:

Military facilities – 61 prisoners

- Punta Peuco: 50
- Cordillera: 10
- Police Hospital: 1

Civilian jails – 7 prisoners

- CPP Temuco: 5
- CPP San Antonio: 1
- CET Valdivia: 1

Place of detention yet to be confirmed – 1 prisoner

** Over the same period 11 more individuals, not included in the total of 777, died while under charges (7) or having been found guilty (4).*

*** Although as of mid September 2010 one prisoner had still not presented himself to begin serving his sentence: Luis Gajardo Arenas, sentenced on 13/07/2010 to 5 years and 1 day for the aggravated homicides of Ricardo Lagos Reyes, Alba Ojeda Grandón y Carlos Lagos Salinas (Caso Ejecuciones Chillán).*

Sentences

Between 2000 and July 2010, **296** former security force agents had received a total of 506 condemnatory sentences for dictatorship-era HRV crimes in Chile. 213 of these agents have had one or more of their sentences confirmed by the Supreme Court, with almost two thirds of the 213 receiving some kind of benefit such as sentence reduction or parole. Approximately*** 7 of the 213 have fully served the sentence imposed.

**** To date there has been no systematic central register of the final completion of sentences by agents sentenced for human rights crimes, nor any systematic monitoring of the satisfactory completion of compulsory parole conditions such as monthly reporting or other supervisory measures. Both omissions are apparently in the process of being rectified. The Observatory will report in future bulletins on the progress of these improvements, which have been catalysed in part by the increase in civil society demand for detailed information about these issues.*

COURT AND JUDICIAL BRANCH NEWS

Changes to judicial branch coordination of human rights cases

On 13 August the Supreme Court reassigned the role of case coordination for human rights investigation to judge Jaime Rodríguez Espoz a serving member of the Criminal Bench, which sees the majority of HRV cases that are sent to the final level of appeal. Rodríguez Espoz replaces judge Sergio Muñoz in the role. In one of his final actions before handing over Muñoz, who has a reputation as a dogged and extremely capable investigator, inaugurated a new internal IT system that allows judges assigned to human rights cases to exchange information with colleagues and access up to date information about cases nationwide.

Naming of new supplementary magistrates could alter prevailing Supreme Court doctrine regarding human rights cases

The broad programme of judicial reform implemented in Chile from the mid 1990s included the introduction of *'abogados integrantes'*, senior members of the legal profession who, despite not having trained as judges, would stand in for career judges during temporary absences due to sick leave etc. Present opinions on the Supreme Court's criminal bench regarding amnesty are extremely finely balanced, with 2 of the 5 current permanent members voting consistently to apply amnesty and statutes of limitation to war crimes and crimes against humanity. The views of supplementary magistrates have therefore on occasion been decisive in confirming or reversing the trend towards allowing final sentencing for these crimes to go ahead. Early 2011 will see the next round of applications and selection for these posts, and the final lineup will doubtless be taken as a signal of future intentions towards presently open cases.

Judicial embargo on Pinochet properties lifted by new Riggs case judge

In early August a petition by lawyers representing Lucia Hiriart, widow of former dictator Augusto Pinochet, who died in December 2006, succeeded in having the partial economic embargo on family properties reversed. The measure was part of ongoing investigations into the origins of the family's fortune, during the course of which Pinochet was charged by previous case judges Sergio Muñoz and Carlos Cerda with crimes including tax evasion, illegal enrichment, use of false passports and falsification of official documents. The embargo has only been lifted for the portion of family assets that were held directly and exclusively in Pinochet's name: other family assets remain subject to judicial scrutiny. At a previous stage of the investigation the Santiago Appeals Court estimated that less than 10% of the US\$ 21 million family fortune discovered to that date could be legally accredited.

Initial verdicts in cases Tejas Verdes and Berríos

On 9 August 2010, investigating magistrate Alejandro Solís delivered first instance guilty verdicts against 5 former agents in investigations for torture committed in the military detention centre Tejas Verdes during the early 1970s. The sentences, of 5 years and a day, will have to be confirmed on appeal. They nonetheless represent another step forward in the gradual judicial acknowledgement of survived torture as part of the universe of justiciable repressive crimes, even though for legal reasons the crime is recognised according to the criminal code in force at the time under the lesser figure of “illegitimate pressures” (*apremios ilegítimos*). Until recently both the courts and private complainants had tended to prioritise cases of forced disappearance and extrajudicial execution over cases for serious violations committed against thousands of survivors of repressive crimes.

On 10 September the same judge emitted the first verdicts for the assassination of civilian DINA agent Eugenio Berríos. The case has been under investigation since 1995, when the remains of the former chemist were discovered buried on a beach in Uruguay. The former agent was one of the first fatal victims of cover-ups and evasion of justice carried out by military security services in the immediate transition period. Concerned over Berríos’s intimate knowledge of the circumstances surrounding the assassination of former chancellor Orlando Letelier, one of the first cases reactivated on transition thanks to its explicit exclusion from the 1978 Amnesty Law, Chilean operatives collaborated with their Uruguayan colleagues to kidnap the former agent and spirit him out of the country. After living for a time in Uruguay in the custody of his captors, Berríos was shot dead. The first instance convictions included sentences against 14 former military officers – 11 Chileans and 3 Uruguayans – for crimes including criminal conspiracy, kidnap and homicide. Five more former Chilean agents were absolved of all charges. The verdict, which will be appealed, also awarded compensation to Berríos’s widow and to Fabiola Letelier, well-known human rights lawyer and sister of the assassinated former foreign minister.

TRENDS IN SENTENCING

On 30 August the Supreme Court gave its final verdict in the case of the disappearance of Catholic priest Antonio Llidó. Sentences of 5 years were confirmed against former DINA agents Manuel Contreras Sepúlveda, Marcelo Moren Brito, Miguel Krassnoff Martchenko and Basclay Zapata Reyes. All were given the benefit of parole (*libertad vigilada*); nonetheless all 4 were and remain in prison for other crimes. Three other former agents were acquitted. See the Observatory web page www.icso.cl/observatorio-derechos-humanos to download the full text of the verdict and/or a document detailing of sentences, places of reclusion and benefits for each of the 69 former agents currently imprisoned (both in Spanish only).

All Chilean court sentences at Appeals level and above (Supreme Court) are also available from the official web page of the judicial branch at www.pjud.cl. To facilitate location of the relevant sentence in the official system, follow the

instructions given on the introductory page of the Observatory's new case search engine and/or use the Observatory search facility to identify the unique case reference (Rol) of each investigation.

Benefits, mitigating and aggravating factors applied in human rights verdicts

The previous bulletin (number 8, July) analysed patterns in the recent application of benefits and mitigating circumstances set out in the Chilean Penal Code and Code of Military Justice in the final sentencing of those found guilty of grave human rights crimes. The present section complements the previous analysis of use of half prescription, 'undue obedience', parole and sentence remission between mid 2007 and early 2010, analysing the application of aggravating circumstances that result in a sentence higher than the 'average' for the particular crime in question. A range of such circumstances set out in Article 12 of the Criminal Code includes elements such as 'malice aforethought', the pursuit of material recompense or personal gain, the deliberate causing of unnecessary suffering, premeditation, taking advantage of the victim's inability of victim to defend him or herself, the possession of a prior criminal record and/or habitual offending in relation to the same charge (multiple counts).

The aggravating circumstance of habitual offending in relation to the same charge (*'reiteración del delito'*) was invoked 35 times in final verdicts emitted by the Supreme Court between mid 2007 and early 2010, with reference to Article 509 of the Criminal Procedural Code. The applications affected 21 individuals. For 17 of these, the effect in increasing the scale of final sentence applicable was countered by a simultaneous finding of previous good character (*'irreproachable conducta anterior'*). For the remaining 4, previous good character was not applied but the real effect of the finding of multiple counts was similarly dissolved, this time by the application of gradual prescription, which almost invariably produces a substantial reduction in the overall sentence since it is given the same weight as two regular mitigating factors.

According to lawyers currently involved in HR cases, the mitigating factor of cooperation with the investigation (*'colaboración efectiva para esclarecer el delito'*, Article 11 of the Criminal Code) has fallen into disuse in recent times, partly as a result of the simultaneous increase in the use of gradual prescription. This comes about because the Supreme Court is presently treating consideration of the applicability of gradual prescription as compulsory, meaning that where lower court verdicts fail to address the issue, the Supreme Court will automatically issue a replacement verdict rectifying the omission. Agents who may possess information that could be used to clear up crimes of repression therefore prefer to keep silence, since cooperation counts only as a single mitigating factor – insufficient in itself to guarantee a reduction of final sentence – and carries considerable personal costs in the treatment former agents receive from their former comrades in arms. Agents may therefore prefer to wait until their case is seen by the Supreme Court, where the application of gradual prescription, which requires no self-incriminatory action and delivers larger real advantages, is virtually guaranteed.

The Observatory has found no single invocation of the mitigating factor of 'cooperation with investigation' in Supreme Court verdicts since 2007, which is consistent with the thesis put forward by some lawyers about its gradual falling into disfavour. There were, however, in the same period, 4 applications of the mitigating circumstance of 'genuine efforts to repair the harm caused' (*procurar reparar el daño causado*, Article 11-7 of the Criminal Code)

Verdict handed down against a deceased agent will have to be revoked

The current lack of official precision and coordination over the universe of HR cases and suspects in Chile was graphically illustrated in early August when a case for aggravated kidnapping produced a sentence against an already deceased agent. Juan de Dios Fritz Vega, who died of natural causes on 1 July 2010, was found guilty while the other 2 agents implicated in the case were absolved. The verdict will have to be rescinded and replaced by the permanent suspension of the case, at least in regard to the participation of the deceased agent. The episode points up the need for greater control of cases and the individuals involved in them. The new judicial IT system recently implemented by judge Sergio Muñoz ought therefore to prove a significant and much needed step in the right direction.

Analysis of the final verdict in the case of brothers Rafael y Eduardo Vergara Toledo

In bulletin no. 8, published in early August and focused principally on events occurring in July, we reported the outline of the final verdict in the case of Rafael y Eduardo Vergara Toledo, young MIR activists shot dead at point blank range by police officers after having been arrested during a protest. The case does not fall under the 1978 amnesty decree since, irrespective of its status as a crime against humanity, it took place after the upper temporal limit of the decree (which applies to crimes committed between September 1973 and March 1978 only). It was accordingly one of the few cases ever theoretically investigated during the dictatorship period itself, by military courts. August's Supreme Court verdict is however uncharacteristically frank in categorically declaring the previous investigation invalid, and for good measure classifying the crime as a crime against humanity/ war crime for the purpose of dissolving prescription (statutes of limitation). The Court nonetheless maintained its view that 'gradual prescription' is of a different juridical nature and is not therefore ruled out even where full prescription cannot be applied.

There follows a more comprehensive analysis of the judicial reasoning contained in the Supreme Court's sentence of 4 August 2010. The full text of the sentence, in Spanish only, can be downloaded from our web page or from the page of the Chilean judicial branch, www.pjud.cl The analysis below was provided by Chilean human rights lawyer Karinna Fernández. The notes in square brackets are editor's notes used to clarify certain legal terms.

The first instance verdict in the Vergara Toledo brothers' case had been subsequently upheld by the relevant Court of Appeals, which confirmed sentences of 10 years and 1 day against retired police officers Alex Amber and Francisco Toledo for aggravated homicide, and 15 years and 1 day against Jorge Marín for the aggravated homicide of Rafael and the 'simple' homicide of Eduardo Vergara Toledo. This verdict and associated sentences were nonetheless struck down and replaced in August by the Supreme Court, which held that both previous instances should have applied gradual prescription [Article 103 of the Criminal Code, and see Bulletin no 8, July]. The article had been invoked by the defence of all 3 accused.

The Supreme Court's definitive replacement verdict considered the following points:

- **Both murders clearly constitute crimes against humanity.** Moreover, and most unusually, the Court went on to describe the prevailing context in which the crimes were committed in order to ground even more firmly its finding that the crimes are not subject to statutes of limitation. The Court made unusually wide and ample reference to principles and instruments of international human rights law including the Geneva Conventions and the notion of *ius cogens* [the idea of customary human rights law that is binding on any and all states irrespective of whether or not it has been spelt out in a treaty or agreement ratified by the state in question].

The verdict accordingly established that at the date of the crime, 29 March 1985, Chile was subject to a state of siege, officially decreed in response to a supposed "internal disturbance". The state of siege allowed the dictatorship to arbitrarily suspend "various individual guarantees and liberties ... the same as would have been the case for a state of internal war", going so far as to suspend the faculty of habeas corpus.

The Supreme Court declared that "this scenario, with such a high level of restriction of individual liberties, and the decreeing of a state of constitutional exception analogous to a state of internal war, leads necessarily to the conclusion that international humanitarian treaties were fully applicable and the killings of Eduardo and Rafael Vergara Toledo were a crime against humanity".

- **Double jeopardy ('cosa juzgada') does not apply.** The defence argued 'cosa juzgada' [the existence of a completed prior case, which under principles designed to guarantee defendants' rights would invalidate any new trial], but the Court considered that the previous investigation was not identical in terms of either the crimes or defendants investigated, adding that the previous process did not even get as far as the detention of potential suspects.

The Court went further, holding that in the previous case "the crime was not rigorously investigated", since the crime was classed as 'unnecessary violence' rather than homicide. It added that the military justice system "offers no guarantee of an impartial process", referred to the previous case as a "simulation of an investigation" and declared that international instances class this type of process to be itself a violation of international legal obligations. To this end the Court cited the Almonacid ruling [an Inter-American Court of Human Rights ruling from 2006, which found against the state of Chile for allowing the amnesty decree law to impede relatives' and victims' right to justice for this kind of crime]

- Finally, the Supreme Court affirmed that the **Inter-American Court prohibits the application of measures that impede the investigation, trial and punishment of those responsible for human rights violations**, accordingly ruling out the application of statutes of limitation and amnesty.

However, the Court continued to sustain its most recent line of argument whereby gradual prescription, as a mitigating circumstance which only affects the extent of the final sentence,

can be applied “[as] the principles and foundations of the non-applicability of statutes of limitation to crimes against humanity do not apply”

The Court accordingly applied gradual prescription and also allowed the mitigating circumstance of previous good character, finally sentencing Alex Ambler Hinojosa and Francisco Toledo Puente to 7 years’ imprisonment, and Jorge Marín Jiménez to 10 years and 1 day.

It should be noted that on the same day this verdict was published, the Court handed down its final sentence in the case of the aggravated kidnapping of Anselmo Radrigán Plaza in December 1974. The Radrigán verdict also applied gradual prescription, but in contrast to the Vergara Toledo verdict applied relatively lenient sentences that do not seem commensurate with the gravity of the crime. Six former agents, including Manuel Contreras, were sentenced to prison terms of 5 years and 1 day, with the benefit of parole (*libertad vigilada*).

OTHER NEWS FROM CHILE

Imprisoned former agents demand more concessions

In early September emergency legislative sessions were held to discuss modifications to the military justice system and to national anti-terrorism legislation, which dates back to the dictatorship period. Right wing parliamentarians suggested that any reforms should be ‘traded’ for additional benefits for the 69 individuals currently serving custodial sentences for human rights crimes. Just days later 9 of the prisoners announced a short-lived hunger strike, copying the strategy adopted by a group of Mapuche activists currently in detention. The Mapuche activists, most of whom are on pre trial remand, have been on hunger strike for almost 70 days in support of their demands not to be subjected to parallel trials in civil and military courts, and for the reclassification of the crimes of which they are accused to within the normal sentencing range for offences that range from damage to property to an attack on a state prosecutor.

In contrast, the 69 former repressive agents currently in custody are all serving fully confirmed final sentences for aggravated homicide (55 counts), homicide (15 counts) and/or kidnapping (102 counts). Some have additional sentences for more minor crimes including criminal conspiracy (7 counts), but none is in prison exclusively for these minor crimes. Contrary to the claims made by the would-be hunger strikers [the action was called off within a matter of hours], most of them have already received substantial sentencing benefits that significantly reduced the length of time they are supposed to serve. The benefits applied range from gradual prescription and former good character to complete conditional remission of some sentences and parole for others. The latter measures, now almost routinely applied to individuals who are already serving long prison terms, mean in practice that additional new sentences lose all real effect. In the case of Raúl Iturriaga Neumann, supposed leader of the protest, the accumulation of sentences and the invocation of the benefit of conditional sentence remission have already reduced by at least 18 years his final sentence tariff for counts of aggravated homicide, aggravated kidnap and criminal conspiracy

(See Observatory web page, documents “Historia judicial de los “huelguistas” de Punta Peuco” (homepage) and “Condenados actualmente cumpliendo penas de presidio” (Publicaciones y Actividades menu), for more details.

Investigation into the 1991 assassination of Jaime Guzmán reopened

In early September 2010, the family of assassinated former Senator Jaime Guzmán formally requested the reactivation of the judicial investigation into his death. Guzmán was killed in April 1991 by militants of the Frente Patriótico Manuel Rodríguez, an armed resistance group some of whose members refused to lay down arms once democratic transition began in 1990. Guzmán, founder of the right wing UDI party and one of the main civilian figures closely associated with the military regime, was shot as he left the Catholic University, where he was giving classes. He had recently been elected senator under the binominal electoral system set out in the 1980 Constitution of which he was one of the principal architects. The assassination, which took place just days after the official publication of the Rettig report – result of Chile’s first official Truth Commission – awoke fears of a possible outbreak of political violence and led directly to the cancellation of most of the nationwide activities that had been planned to promote and diffuse the report’s conclusions.

The catalyst for the reopening of the case was a television interview given to a national Chilean TV channel by former FPMR militant Mauricio Hernández Norambuena, in prison in Brazil since 2002 for his part in the kidnapping of Brazilian businessman Washington Olivetto. The latter crime was committed by Hernández Norambuena after he escaped in 1996 from a Chilean high security jail, where he was serving a life sentence for the kidnapping of Cristián Edwards, son of well-known press magnate Agustín Edwards, owner of Chile’s main broadsheet *El Mercurio*. Repeated efforts have been made to request the extradition of Hernández Norambuena from Brazil to serve the remainder of his sentence for the Edwards crime in Chile, a move that would also allow him to be actively investigated or tried for the Guzmán assassination. The requests have nonetheless been repeatedly denied, since prevailing extradition practice would require the pending sentence faced by Hernández Norambuena in Chile to be equal to or shorter than the 30 years he is presently serving in Brazil. In May 2010, the Chilean Supreme Court seemed to close the door on that possibility when it rejected a move to reduce Hernández Norambuena’s sentence for the Edwards kidnapping.

The comments made by Hernández Norambuena in his recent TV appearance reopened speculation about the level of knowledge or involvement of other high-level FPMR militants in the Guzmán killing. The individuals concerned include Enrique Villanueva Molina, who has consequently been cited by investigative magistrate Mario Carozza to give additional testimony, and Sergio Galvarino Apablaza, whose extradition from Argentina was approved in principle by the Argentine Supreme Court on 14 September 2010 after years of judicial wrangling. The extradition, if it finally goes ahead, would allow Galvarino to be investigated for both the Edwards

kidnapping and the Guzmán assassination. The final decision rests with the Argentine executive, as Galvarino has requested political asylum.

Chilean Supreme Court requests broadening of extradition warrant for Chilean agent Carlos Herrera

At the beginning of August, the Supreme Court requested that its sister tribunal in Argentina broaden the scope of an extradition warrant conceded back in 1993 for former Chilean DINA and CNI agent Carlos Herrera. Herrera was handed back to Chilean authorities and is currently serving sentences for the assassinations of de Tucapel Jiménez and Juan Alegría. He has served out an additional sentence for the death of a third victim, Mario Fernández. Herrera is now of interest to Chilean investigative magistrate Joaquín Billard, currently in charge of the case of Pisagua, a concentration camp in the northern desert used to house political prisoners during the early years of the dictatorship. The discovery of a clandestine common grave close to the Pisagua town cemetery was a key moment that marked the Chilean transition process at the beginning of the 1990s. Herrera left the country at around the same time, settling in Argentina in 1991. According to current extradition law, Herrera can only be tried in Chile for the charges formulated in the original extradition warrant. The Chilean Supreme Court therefore wants the same Argentine court that conceded his extradition in 1993 to allow the amplification of the warrant to include the possible new charges.

"Human remains" discovered during the remodelling of the National Stadium prove to be of animal origin

During August, renovation works on Chile's main sports stadium uncovered bones of unknown origin during excavations in the area of the swimming pool. The national forensic service and the specialised human rights crimes brigade of the Investigative Police were called in, owing to the site's history as a site of detention and torture in the last months of 1973. Forensic examination however revealed the remains to be of canine origin. The incident continues to generate controversy, as the workman who reported the initial discovery to the relevant authorities was later dismissed.

The remodelled stadium was subsequently re-inaugurated for use for sporting and cultural events, and this year for the first time human rights groups were allowed into the site to carry out traditional annual commemorations on the 11 September anniversary of the military coup. The ceremony focused on a section of the stadium where the original terraced benching has been preserved and given national monument status. The original renovation project was to replace the original terracing throughout with individual seating, to comply with current FIFA requirements for the hosting of international football fixtures.

Santiago municipal mayor reacts angrily to citation as witness in a human rights case

Cristian Labbé, former military officer and current municipal mayor for the uptown Santiago district of Providencia, was summoned by judge Raquel Lermenda in August to give testimony in the course of her investigation into the Operation Colombo repressive episode. Labbé's appearance was initially requested by lawyers from the Interior Ministry's Human Rights Programme due to his having been assigned during part of the relevant period to the Tejas Verdes military regiment headquarters, used under the command of Manuel Contreras as a site of illegal detention and torture early in the dictatorship. Labbé reacted angrily to the summons, declaring afterwards to the press that the armed forces "won't take any more" and claiming that "former terrorists" thrive whilst the military "are still seated in the dock".

Remains of Uruguayan citizen disappeared in the north of Chile in 1973 finally returned to her family by Chilean authorities

In mid August, the executive secretary of Uruguay's official Comisión para la Paz travelled to Chile to receive, on behalf of the family, the remains of a possible victim of repression who prior to 2008 did not figure in official registers of human rights violations in either of the two countries concerned. Mónica Benaroya Pencu, a teacher who disappeared in 1973 in the northern Chilean city of Arica at the age of 48, was identified after her remains were uncovered in a chance discovery on a Chilean military training range close to the border with Peru. The teacher was finally laid to rest with the appropriate ceremony in a Uruguayan cemetery in the days following the handover. Both the ceremony and the preceding receipt of remains were private affairs, at the request of the teacher's now-elderly surviving relatives. A judicial investigation in Chile of death in suspicious circumstances will now seek to clear up the circumstances of the case. Ms. Benaroya would become the ninth person of Uruguayan origin known to have been killed by the Chilean dictatorship.

Reparations programmes come under scrutiny from new authorities

Chile's *Programa de Exonerados Políticos*, which provides modest economic reparations to people who suffered blacklisting and politically motivated maltreatment during the dictatorship period due to being classified as opponents of the regime, is under investigation by the Ministry of the Interior after a man was arrested under suspicion of having falsified application papers to obtain benefits for individuals not entitled to receive them. The man is expected to be charged with fraud and forgery of public documents. The Programme's register currently contains around 147,000 names.

A parallel investigation continues into the contracting out of further and higher education courses, offered to survivors of political imprisonment and torture under the terms of the 2003/4 Valech Commission report. The relevant fiscal agency (*Contraloría de la República*) is scrutinising the criteria used by Ministry of Education

personnel to award the contracts for the scholarship programmes to certain private universities. The investigation is not focused on individual recipients of the scholarships but rather on the deficient standard of training offered by some of the authorised service providers.

Bicentenary opinion poll suggests that human rights issues continue to provoke social divisions

Chile's Bicentenary celebrations of 18 September 2010 stimulated discussion and studies on the theme of national identity, including an opinion survey carried out by the 'Visión Humana' consultancy group. The results suggested that human rights, together with social inequalities, were the issues most often identified by respondents as sources of conflict. However human rights was mentioned by only 15.5% of the survey respondents, as opposed to the 45.6% who thought current inequalities to be a more pressing cause of disagreement or division.

NEWS FROM THE REST OF THE REGION

Argentina

On 3 September 2010 a Buenos Aires appeals court ruled admissible a petition from Argentine relatives seeking to open universal jurisdiction investigations into crimes committed in Spain between 1936 and 1977 against victims of Franco-era repression. The complaint, which had initially been rejected by Argentine judge María Servini de Cubría, constitutes a neat reversal of transnational investigations begun in Spain in 1996 into crimes committed in Argentina and Chile, and eventually handled by Spanish judge Baltazar Garzón. Garzón was suspended from his duties in Spain when he attempted to broaden his investigations to include domestic crimes, and on 7 September the Spanish Supreme Court confirmed that he will face legal charges for supposed infractions of the Spanish amnesty law of 1977.

During ongoing domestic human rights investigations in Argentina, charges were confirmed against former military officer and regional governor candidate Antonio Bussi, for crimes committed in the province of Tucumán between 1976 and 1983. The trial of former junta members Rafael Videla and Reynaldo Bignone for appropriation of minors was postponed until March 2011, while testimony from survivors in the ESMA case suggested the existence of important internal navy archives that could hold clues to the whereabouts of hundreds of victims of forced disappearance.

Efforts continue to identify possible remains of some victims of forced disappearance in Argentina, with the dispatch in August of more than a thousand samples to laboratories in the US in the course of the creation of a genetic database of relatives and still-unidentified victims. The Argentine forensic anthropology team, EAAF, was given the go-ahead by judicial authorities to begin excavations in the province of Paraná, where suspected clandestine burials were carried out.

Brazil

In the coming months Brazil's Chamber of Deputies will be debating a legislative project submitted by deputy Luciana Genro, which seeks to modify the 1979 Amnesty Law to allow the investigation and sanctioning of some of the human rights violations carried out by public

officials and military officers during the 1964 to 1985 dictatorship. The search for remains of disappeared members of a left wing guerrilla column in the district of Araguaia continues, as initial forensic examination of remains discovered in a nearby cemetery suggest that they do not belong to victims of repression.

Peru

A few days after the 7th anniversary of the handover of Peru's final Truth and Reconciliation Commission report, the prospects of justice for the almost 70,000 fatal victims of the country's 1980 to 2000 political violence suffered a severe setback with the promulgation by president Alan García of a series of decree laws. The measures, Legislative Decrees 1094 to 1097 inclusive, were published on 1 September 2010. Decree 1097 allows for the suspension or permanent archiving of criminal cases which have exceeded a stipulated maximum period of investigation, and has therefore been denounced by human rights organisations as a disguised full stop law. The move has already produced a wave of petitions by military defence lawyers to have cases against their clients suspended under the new rules. Some of the more notorious cases that could be affected include the massacres at El Frontón, Barrios Altos and Castro Castro.

Decree 1097 stipulates, in a section of 'complementary dispositions', that the non application of statutes of limitation to crimes against humanity, a principle recognised under international human rights law for various decades, should only be applicable in Peru to crimes committed after 2003, the date on which the convention setting out the principle in writing entered into force at national level. Decree 1097 also instructs judges not to remand suspects in human rights cases into regular custody, suggesting that they be conceded "house arrest", in places that can include any kind of military facility, and/or granted bail payable by the relevant branch of the armed forces or police. The decree also seeks to lift judicial prohibitions on freedom of movement, stipulating that suspects cannot continue to be prohibited from leaving the country once more than 8 months have passed since the opening of an investigation. These provisions in fact form part of new defendant guarantees in criminal procedure reforms that have not yet come into force.

Decree 1096 strengthens the extent of military *fuero* (legal exemptions and/or special jurisdiction) and the independence of military courts from civilian oversight. Decree 1095, which sets out norms for the legitimate deployment of the armed forces within the national territory, broadens the existing concept of "hostile groups" without adding a precise definition, raising fears that it could be used against peaceful protesters. The decree also appears to extend the jurisdiction of military courts from crimes related to military duties ("delitos de función") to include possible ordinary crimes committed by military personnel. The regional and international trend in modern times is moving in the opposite direction, thanks to a gradual recognition that military justice, where it exists at all, should be strictly limited to crimes related to military duties committed by military personnel, where no civilians are involved. Decree 1094 approves a new military criminal code, which reintroduces certain typifications of crimes related to military duties that had been derogated in 2006 after having been declared unconstitutional by the Constitutional Court.

The measures have provoked widespread criticism in the international human rights community, with calls on the Peruvian congress to revoke the decrees and on the courts to refuse to apply them. The criticisms were echoed by renowned Peruvian novelist and former right-wing presidential candidate Mario Vargas Llosa, who announced his resignation from the presidential commission that is preparing a project for a national museum of memory and human rights.

Uruguay

At the end of August, Uruguayan judicial authorities authorised a team of forensic anthropologists to carry out excavations at an army battalion headquarters where it is suspected that remains of victims of forced disappearance may be buried.

Meanwhile, the still modest number of cases investigating former high ranking military officers for repressive crimes continues to grow. On 6 August, a court appearance by former officer Juan Carlos Gómez was marked by a street protest accusing him of responsibility for torture and other crimes including the castration of two political prisoners. On 25 August it was the turn of Carlos Calcagno, former infantry captain. Calcagno, whose extradition to Paraguay was requested in 2005, was greeted outside a Montevideo courtroom by protests from survivors who identified him as the officer under whose command they suffered torture, while fellow prisoners Walter Arteché and Gerardo Alter were killed. Calcagno's court appearance was related to two other cases of disappearance, related, as is the Paraguayan extradition request, to Calcagno's alleged participation in the regional repressive apparatus Plan Condor (see below). Paraguayan military intelligence documents recovered from the so-called "Terror Archive" mention Calcagno's presence on Paraguayan territory in order to take part in joint repressive operations with Paraguayan and Argentine colleagues. The Uruguayan public prosecutor's thesis is that the joint operations included the 1977 interrogation under torture of Gustavo Inzaurrealde and Nelson Santana, followed by the rendition of the same prisoners to Argentina and finally to Uruguay, in the custody of Calcagno. The subsequent disappearance of the two men forms part of the charge sheet for which Paraguayan judge Gustavo Santander requested Calcagno's extradition in 2005. The increasing overlap and repetition of suspects, witnesses and evidence between the "Condor countries" as each country begins or re-opens national justice processes was one of the factors motivating the recent regional meeting co-convened by CELS Argentina, the Observatory, and ICTJ (see above, 'Launch of online search engine').

Sources linked to the Uruguayan human rights community highlight the fact that only 32 of over 150 cases of forced disappearance of Uruguayan nationals were recognised by the state *Comisión para la Paz* of 2003, the closest national equivalent to date of an official truth commission. The discrepancy is partly explained by the fact that many Uruguayan victims were disappeared in neighbouring countries, particularly Argentina, and/or transferred in secret across national borders thanks to the clandestine rendition and cooperation practices instituted by military regimes in the Southern Cone in the 1970s under the name Plan Condor. In particular, there are grounds for suspecting that some time after an initial, now acknowledged, mass transfer of prisoners from the Argentine clandestine detention centre Automotores Orletti, a second air transfer of around 20 victims, now disappeared, was carried out. In 2005 the Uruguayan Air Force appeared to officially recognise this second operation, but the army continues to deny it ever took place. In total, the remains of only 3 victims of disappearance have been located on national territory in recent years. Although there are currently cases open for some of the related repressive crimes, the typification of the crime of forced disappearance is still resisted by judicial authorities (see bulletin no.8, July).

The legal framework for recent Uruguayan efforts to improve justiciability for human rights crimes has always been restricted by the national amnesty legislation known as the "Ley de Caducidad". To date there has never been sufficient high level political will to seek to modify or even overturn the legislation: a proposed national referendum to this effect in late 2009 failed to gain the necessary popular majority. However, in mid August 2010 the political committee of the governing Frente Amplio coalition agreed on a legislative proposal that would reinterpret Article 72 of the Constitution towards a more active application of international and regional human rights standards. The proposal is currently before the president's office and foreign ministry, and should soon be submitted to the legislative



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chamber for debate. Although the detailed content of the proposal has still not been made public, it is expected to remove some of the main impediments to full compliance by the Uruguayan state with international obligations to investigate and sanction grave human rights violations.

Sources for this month's bulletin include:

Press reports; the Human Rights Programme of Chile's Interior Ministry; CELS Argentina; Chilean lawyers Karinna Fernández, Eduardo Contreras and Magdalena Garcés; Uruguayan lawyer Pilar Elhordoy, Uruguayan graphic journalist Martha Passegui; researcher Camila Gianella; Peruvian human rights organisations and justice system personnel and the daily Spanish-language news bulletins of the International Center for Transitional Justice (ICTJ). Contact comunicaciones@ictjcolombia.org for more information or to sign up.

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

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