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FACULTAD DE DERECHO

Jurisprudential milestones in human rights cases: Chile 1990-2020

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

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Principal jurisprudential milestones 1990-2020, in cases for serious human rights violations committed during Chile's 1973-1990 military dictatorship

This document provides a summary of major legislative, judicial and 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 much broader set of events. For each selected event, a brief summary of the facts of the crime at issue is followed by a non-technical assessment of the significance of the event itself.

The domestic judicial verdicts referred to can be consulted in full (in Spanish only) via Chile's official judicial website at www.pjud.cl, using the case code ('Rol' number) quoted in this document. The document also includes mention of all Inter-American Court of Human Rights case rulings involving Chile in the relevant period, whose subject matter is related to dictatorship-era crimes. The texts of those verdicts can be found at http://www.corteidh.or.cr/ , and should be available in English as well as Spanish.

The Observatorio, founded in 2008, produces a termly e-bulletin (in Spanish only) summarising case advances and news about truth, justice and reparations developments in Chile and neighbouring countries. It also produces a substantial annual report chapter on transitional justice in Chile, for the Universidad Diego Portales' annual Human Rights Report (usually in Spanish only, some editions also translated into English). To receive the bulletin please e-mail observatorioddhh@mail.udp.cl asking to be added to the bulletin mailing list. To access annual report chapters visit www.derechoshumanos.udp.cl and access the sections headed Informe Anual or Observatorio Justicia Transicional.

CASE or EVENT	CASE CODE (‘RoI.)	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, Juzgado de Letras of Lautaro, southern Chile	20/09/93	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.			
2) Bárbara Uribe and Edwin Van Yurick **[DD]**	38.638-1994	Santiago Court of Appeal	30/09/94	Bárbara Uribe and her partner Edwin Van Yurick, 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 initially 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.** This 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. In 2005, a new investigation was however opened due to the presentation of a new criminal complaint (*querella*). On 16 November 2015, judge Zepeda found both amnesty and statutes of limitation to be inapplicable and applied arts. 3,49, 50 and 51 of the Geneva Conventions. Citing Art. 27 of the Vienna Convention, he held international law to be hierarchically superior to domestic legislation, and ruled that the inapplicability of statutes of limitation is a principle of *ius cogens* and part of			

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<tr><td></td><td colspan="4">international customary law. On 14 March 2018 the Santiago Appeals Court confirmed this new verdict, increased some of the sentence tariffs imposed, and convicted some individuals who had been absolved by the initial verdict (case code 243-2016). On 17 September 2019, the Supreme Court confirmed custodial sentences against former DINA secret police agents: Miguel Krassnoff, Nelson Paz Bustamante and César Manríquez Bravo (all sentenced to 10 years, 1 day), and Ricardo Lawrence Mires, (5 years, 1 day), todos sin beneficios. In an important and unusual departure, the Court also expressly ordered that the sexual violence to which Bárbara Uribe had been subjected should be investigated and prosecuted (see Event #30, below).</td></tr>
<tr><td rowspan="2">3) Specialization of Supreme Court into benches (via law 19.374)</td><td>Law 19.374</td><td>N/A (legislature)</td><td>18/02/95</td><td>Law 19.374 came into force, amending the existing Organic Law on Courts, the Civil Procedure Code and the Criminal Procedure Code, in regard to the organization and workings of the Supreme Court, and appeals before it</td></tr>
<tr><td colspan="4">SIGNIFICANCE:
The most significant part of this reform was the replacement of the previous Art. 95 of the Organic Law on Courts with a new version which established that the Supreme Court would henceforth function mostly in thematically-specialized benches (with some full sittings). It was left to the Court to decide how best to distribute its existing members among the new specialist, five-person benches. The reform concentrated those judges with most criminal justice experience into the Second Bench of the Court, which thereby became the principal venue for hearing any appeals relating to dictatorship-era human rights crimes. The performance of the new Bench was particularly notable in regard to Justices Luis Correa Bulo and (from 1998) Enrique Cury Urzua: both ruled consistently in favour of compliance with duties to investigate, prosecute and punish crimes against humanity.</td></tr>
<tr><td>4) Murder of Orlando Letelier</td><td>30.174-1994</td><td>Supreme Court</td><td>30/05/95</td><td>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.</td></tr>
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	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.			
5) Murders of Manuel Guerrero, Santiago Nattino and José Manuel Parada **["Degollados" case]**	31.030-1994	Supreme Court	27/10/95	Santiago Nattino, José Manuel Parada and Manuel Guerrero were fellow Communist Party activists. José Manuel worked at the Catholic Church human rights defence organisation the Vicaría 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's Quilicura district to the international airport at Pudahuel. Their throats had been cut.

	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.			
6) Constitutional Reform 1997, via Law 19.541	Law 19.541	N/A (Legislature)	22/11/97	Law 19.541, establishing constitutional reform in relation to the judicial branch, came into force
	SIGNIFICANCE: This law modified various provisions of the 1980 Constitution, in particular, Ch. VI. The changes include an increase in the total number of judges who made up the Supreme Court, together with the stipulation that five of them should be senior lawyers from outside the judicial profession [in Chile, the judiciary is traditionally a separate career path from other branches of the practice of law]. The change allowed eminent jurists into the Court for the first time, such as Judge José Luis Pérez Zañartu, who joined the criminal bench.			
7) First direct criminal complaints admitted against former dictator Augusto Pinochet Ugarte **[Episodes "Caravan of Death" and "Calle Conferencia"]**	2182-1998	Juan Guzmán, Special Investigative Magistrate	12/01/98 (Conf.) & 28/01/98 (Carav.)	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).
	SIGNIFICANCE: These presentations became **the first criminal complaints ever admitted that pointed 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.			
8) Pedro Poblete Córdova **[DD]** ***[Poblete Cordova, cont./]***	469-1998	Supreme Court	09/09/98	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 concomitatnt 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.			
		Santiago Appeals Court, ruling on a request from judge Juan Guzmán	06/03/00	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.

9) First *desafuero [(*impeachment[1]*)* of Augusto Pinochet Ugarte	**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.			
10) First *procesamiento* (bringing of charges)[2] against Augusto Pinochet Ugarte		Judge Juan Guzmán	01/12/00	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.			
11) First designation of special investigative magistrates for human rights cases	N/A	Supreme Court	20/06/01	The Supreme Court designated 9 senior judges to work exclusively on dictatorship-era human rights cases, and 51 more to work 'preferentially' on 114 cases of forced disappearance. These designations were expanded in 2002 and 2004. In 2010, for the first time, a coordination role was created within the Supreme Court for these cases. Judges appointed to these roles were relatively senior (Appeals Court rank). Over time, their full-time (exclusive) designation was reduced or removed.

[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.

[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.

12) Supreme Court verdict in Domic Bezic v Treasury ("Fisco")	4.753-2001	Supreme Court	15/05/02	The mother and siblings of Jorge Jordan Domic, a victim of politically-motivated execution who was killed on 16 Oct 1973 at a military base in La Serena, made a civil claim against the state. The first instance judge accepted the suit and ordered damages to be paid. The Appeals Court of La Serena upheld the verdict. The Third (Constitutional) Bench of the Supreme Court however annulled the sentence, finding in favour of an appeal lodged by the Consejo de Defensa del Estado [a legal entity charged with upholding state interests]. The bench accordingly rejected the suit, asserting that the statute of limitation on civil claims had expired and that moreover the previous verdicts had not taken into consideration that the family had already received some administrative reparations (as established in Law 19.123).
[Domic Bezic v Fisco" cont./]	**SIGNIFICANCE:** This verdict set a negative precedent by ruling that domestic norms regarding statutes of limitation on extracontractual responsibilities of the Treasury must be applied even in cases of grave human rights violations: in this particular case, the relatively short periods stipulated in the civil code. This doctrine was strongly argued for by Judge Urbano Marin, one of the influential legal thinkers who had entered the court from outside the judiciary due to 1997 reforms (see above). The doctrine was adopted by the Supreme Court's Third (Constitutional) bench, which at the time saw all standalone civil claims (ie claims not submitted within an ongoing criminal investigation) arising from human rights cases. Subsequently developed by Judge Pedro Pierry, a former member of the board of the Consejo de Defensa del Estado, the state entity that represents the interests of the treasury and has consistently argued against all civil claims, the doctrine was extremely deleterious to victims' or relatives' right to reparation, refusing as it did to apply international human rights norms contained in treaties ratified by Chile or in other sources of international law. Until the doctrine came to be abandoned, by majority opinion, in late 2014 (after claims were reassigned to the criminal bench, see Event #31, below) it impeded compensation in over a hundred similar cases.			
13) Law 19.810 allows designation of specially-dedicated judges	Law 19.810	N/A (Legislature)	11/6/02	Law 19.810 modified general criminal law procedure, establishing a rota system for judges to receive cases; allowing for criminal case judges to be assigned exclusively to investigative duties, and modifying appeals procedures in criminal cases
	SIGNIFICANCE: The law modified the Criminal Procedure Code and the Organic Law of Courts. It introduced a new article, Art. 66(3) to the former, by which regional Appeals Courts were to be allowed to designate criminal case judges in their districts to attend exclusively to their investigative responsibilities in any case(s) that the respective Court considered to be of particular connotation and/or of significant public concern. This law provided the legal basis for the designation, inter alia, of judges with exclusive responsibility for dictatorship-era human rights case investigations.			

14) Case of Miguel Ángel Sandoval Rodríguez **[DD]** ***[CONT. Case Miguel Ángel Sandoval]***	517-2004	Supreme Court	17/11/04	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,** as a result of which procedures were changed to minimize what was regarded as 'disruption' from human rights cases.			
15) 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.			
16) Almonacid case: Inter-American Court of Human Rights finds	N/A	Inter-American Court of Human Rights	26/9/06	Complaint no. 12.057, received by the Inter-American Commission on Human Rights on 15 Sep 1998, was transferred to the Court on 11 July 2005. It alleged denial by the Chilean state of the right to justice, in contravention of Arts. 8 and 25 of the American Convention on Human Rights, to which Chile has been a signatory since 1990. The case concerned the application of the 1978 Amnesty Decree Law to the

against Chile in Almonacid y otros vs. Chile				extrajudicial killing of Luis Almonacid Arellano, a teacher shot dead on the steps of his home, in the presence of his pregnant wife, on 16 Sep 1973. The verdict found the Amnesty Decree Law to be "without legal effect", ordering that it should not continue to impede the investigation and prosecution of this and similar crimes.
[Almonacid v Chile cont./]	**SIGNIFICANCE:** This was the first regional system verdict against Chile in a case from the dictatorship period. It formed one of a series in which the Inter-American Court condemned, in ever more explicit terms, 'self amnesties' of the sort represented by Chile's 1978 Decree Law (Law 2.191). (See also Barrios Altos v Peru, Sentence of 14 March 2001). The Almonacid case was amply cited by domestic courts in other parts of the region, inspiring, for example, renewed attempts to overcome impunity for torture cases in Brazil. In Chile, although then-Supreme Court president Enrique Tapia refused to acknowledge the binding nature of the verdict, the first subsequent verdict in an analogous case saw the Santiago Court of Appeal denying gradual or partial statute of limitation (a sentence reduction formula) and increasing sentence tariffs (case of Mario Carrasco and Victor Olea). The verdict has subsequently been widely cited by the judicial branch, although by 2019 the Executive and Legislative branches had still not complied with a 2006 promise to legislate in order to make interpretations of Amnesty Decree law 2.191 compatible with Chile's international obligations. The domestic criminal investigation into Mr. Almonacid's death was subsequently reopened, culminating on 29 July 2013 with the concession of partial statute of limitation, leading to a non-custodial sentence of 5 years parole for the policeman who killed Luis Almonacid. The crime was classed as a simple (non-aggravated) homicide.			
17) 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, all the cases continued against other suspects. (In 2013, the Riggs tax fraud investigation was concluded without charges being brought against any member of the Pinochet family; although in 2019 the Inland Revenue Service announced efforts to reclaim millions of dollars' worth of fraudulently withheld taxes.			
18) Case of Hugo Vásquez y Mario Superby	559-2004	Supreme Court	13/12/06	
	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.			

19) Caso Juan Luis Rivera Matus ***[DD]***	3.808-2006	Supreme Court	30/07/07	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
	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 s**entencing benefits such as supervision orders (libertad vigilada).** 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).			
20) 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.			

21) Case of Jacqueline Binfa Contreras ***[DD]***	4.329-2008	Supreme Court	22/01/09	**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 during the summer recess, with a special temporary court composition that proved particularly unfavourable for human rights jurisprudence.
	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)			
22) Case of the Vergara Toledo Brothers **[victims of extrajudicial execution]**	7.089-2009	Supreme Court	04/08/10	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)			

23) 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.
	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).			
24) Case of Rudy Cárcamo ***[DD]***	288-2012	Supreme Court	24/05/12	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.			
25) Case of the murder of Gloria Stockle Poblete	2.200-2012	Supreme Court	21/09/12	Gloria Stockle was raped and murdered in 1984 by soldiers, after attending a social event in a military canteen

<table>
<tr><td>[CONT.
Case Gloria Stockle]</td><td colspan="4">SIGNIFICANCE:
A case whose appeals court stage was dealt with by the Copiapó Appeals Court, the same one which had dealt with some early investigation of, and bringing of charges for, the same 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.</td></tr>
<tr><td rowspan="2">26) Case of Grober Venegas Islas
[DD]</td><td>3.573-2012</td><td>Supreme Court</td><td>22/11/12</td><td>Grober Venegas Islas, aged 43, with no known political affiliations, was last seen alive in a police station in the northern desert city of Arica in late May 1975. He was taken from the station by members of the Army's Regional Intelligence Service (Centro de Inteligencia Regional, CIRE) and taken first to CIRE headquarters in Av. Diego Portales, and then to the interior of the Azapa Valley, from where he disappeared.</td></tr>
<tr><td colspan="4">SIGNIFICANCE:
This was the first case verdict since 2004 in which the Court refused to acknowledge kidnapping as an ongoing or permanent crime: choosing instead to arbitrarily designate a date 91 days after Grober Venegas was last seen, as the date on which the crime ended. It follows that the Court's decision to uphold the conviction was therefore based not on the ongoing crime thesis but on the basis that the incident constituted a crime against humanity [since otherwise it would have been subject to amnesty and/or the statute of limitation]. The ruling was made due to the majority votes of Judge Dolmetsch and participating lawyers Emilio Pfeffer and Jorge Lagos. The bench also upheld the application of gradual or half prescription, reducing the sentence to one of non-custodial length. Pfeffer and Lagos also opposed the concession of civil indemnization to the family, although this was approved on a 3-2 majority vote. This new majority against the recognition of kidnap as an ongoing crime in cases of enforced disappearance was repeated in the next Supreme Court verdict in a similar case (Case of Cecil Alarcón, Rol. 64-2009, 18 July 2013). On that occasion, again, the criminal bench conceded indemnization and explicitly stated that the judicial route to reparation through civil claimmaking was distinct from, and not incompatible with, having exercised one's right to reparation through administrative programmes and other types of reparations provided by the State as a matter of public policy (pensions and etc.)</td></tr>
</table>

27) Resolution by a plenary sitting of the Supreme Court on the computation of dates of expiry of statutes of limitation for civil claims	10.665-2011	Supreme Court plenary (members of all benches)	21/01/13	A plenary sitting of the Supreme Court accepted an argument presented by the State Defence Council (Consejo de Defensa del Estado, CDE) in the case of González Galeno. The CDE wanted the Court to apply **the ordinary civil statute of limitation to the liability (civil claim) aspect of the case** even though the prohibition on statutes of limitation in the case of crimes against humanity ruled out its application to the criminal aspect. The Plenary of the Court was of the opinion that a **date should be established for initiating the computing of expiry of statutes of limitation for civil claimmaking. It set this date as the publication of Chile's first truth commission report, the Rettig report**, in 1991; on the basis that this represented the first moment at which relatives could both have reasonable certainty that a crime had been committed for which the state was responsible, and be free to lodge the respective civil claim without fear of reprisals. According to this calculation, in the case at hand, the respective period had already expired when the claim was submitted, and civil indemnization was therefore rejected. The ruling was **almost evenly divided, passing with the smallest possible majority** of 9 votes to 7.
	SIGNIFICANCE: This resolution might have been expected to set a precedent to be followed in future cases where civil claimmaking was at issue (since although precedent is not strictly considered binding in the Chilean judicial system, signals sent by the Supreme Court, particularly in plenary, are usually obeyed). **However, in practice, the Supreme Court's criminal bench conceded indemnization in the very next case of this type seen** (Cecil Alarcón, Rol 64-2009, 18 July 2013). The Alarcón verdict also restated the position, already set out in Grober Venegas (see above) that judicial and administrative routes to reparation should be considered to be of a different order and are therefore not mutually exclusive. **From this date until date of writing (mid 2019) the Court has maintained the position that the inapplicability of statutes of limitation in cases of crimes against humanity or war crimes applies to both the civil and criminal aspects of such crimes.**			
28) Inter-American Court verdict in García Lucero and others v. Chile.	N/A	Inter-American Court of Human Rights (IACtHR)	28/8/13	On 16 September 1973, Leopoldo García Lucero was illegally detained by Carabineros (uniformed police). He was subsequently taken to clandestine detention centres at the National Stadium, Chacabuco, and Tres Alamos, where he was tortured on numerous occasions over the course of 18 months, leaving him with serious physical consequences. He was **forcibly expelled** from the country in June 1975, since when he has lived in the UK with his wife and two daughters. Mr. García Lucero´s situation was recognised first by the state's *Exonerados Politicos* programme [which registered survivors of politically-motivated dismissals and blacklisting, and assigned economic reparations], and later by the country's second truth commission, the Valech commission. The case before the IACtHR alleged that the Chilean state **failed to guarantee Mr. García Lucero the right to comprehensive reparation and justice** for the torture to which he was submitted. It

				also alleged that direct harm had been caused to his family circle (wife and daughters). The IACtHR found the Chilean state to be **in breach of its responsibilities under Arts. 8(1) and 25(1) of the American Convention on Human Rights (read in conjunction with Art 1(1)), due to not having initiated de oficio, and in a timely fashion, an criminal investigation for torture.** The IACtHR also found that infractions had been committed of Arts 1(6) and 7 of the Inter-American Convention for the Prevention and Sanction of Torture. The IACtHR recommended that the state offer economic support to Mr. García Lucero for meeting his complex health needs, given that the state health reparations programme, PRAIS, was not available to Mr. García Lucero due to his residing overseas.
[García Lucero v Chile cont./]	**SIGNIFICANCE:** This is the first case brought against Chile in the Inter-American human rights system by **a survivor resident outside the country, and dealing principally with the adequacy or otherwise of reparations**. It is also the first case brought over dictatorship-era torture in which the IACtHR asserted its competence to pronounce over the autonomous violations of rights alleged to have occurred after the state ratified the American Convention. The Court found Chile to be in breach of its obligation to investigate, de oficio, torture committed against Mr. García Lucero; noting further that the **mere toleration of private criminal initiatives (*querellas*) brought by survivors was not sufficient to meet this requirement**. The Court also located the date at which the Chilean state ought to have initiated investigations to the *Exonerados Politicos* programme, rather than to the later 2004 Valech truth commission. Specifically, the verdict pinpointed a letter sent by Mr. García Lucero in December 1993, recounting the torture to which he had been submitted. In this regard, the Court's verdict **set a precedent** that could open the way for numerous similar cases (see parr. 126 of the verdict). In regard to structural obstacles to investigation of grave human rights violations, the Court **reiterated its order, made in the Almonacid Arellano case of 2006, in which it instructed the Chilean state to ensure that the 1978 Amnesty Decree Law would no longer present an obstacle to the investigation, prosecution and sanction of those responsible for human rights crimes** (Parr. 150). In regard to reparations, the Court sustained that ***rationae temporae* it did not have competence to pronounce** as to whether the reparations already conceded in the case were full, sufficient and effective, given that the material facts of the case took place before Chile ratified the American Convention or accepted the competence of the IACtHR. The Court also **declined to pronounce on the matter of whether Mr García Lucero's wife and children had been subject to autonomous violations** of their rights. It did, however, recommend that the State offer Mr. García Lucero an **ex gratia payment** to assist with additional medical expenses; a recommendation that was accepted and complied with. The Court established moreover that 'the existence of administrative reparations programmes must be compatible with states' obligations under the American Convention and other international norms; and therefore cannot be allowed to violate the free and full exercise of the right to judicial guarantees, in the terms provided for by Arts. 1(1), 25(1) and 8(1), respectively' (Parr.190, informal translation). The implication is that the **mere existence of a reparations programme is not sufficient, if it is not accompanied by judicial channels or means offering rightsholders the possibility of remedy and/or to challenge the sufficiency of the measures provided.**			

29) Indefinite suspension of the case for the death of President Salvador Allende	5.778-2013	Supreme Court	06/02/14	Deposed Socialist President Salvador Allende died in the government palace (La Moneda) the day of the coup on 11 September 1973. Although it has long been generally accepted that Allende, having decided not to surrender, took his own life in an act of defiance, certain circles on the Left had always refused to accept this thesis. Allende moreover featured on the **official list of victims of political execution produced by the first truth commission (Rettig, 1991).** In response to a criminal complaint lodged in 2011, and after receiving the results of multiple forensic procedures carried out on the exhumed remains of the former president, the **thesis of third party involvement in his death was discarded** and the investigative magistrate declared the permanent suspension of the investigation.
	SIGNIFICANCE: This ruling brought to an end the investigation that had been set in motion by a criminal complaint (*querella)* lodged in 2011 by the political movement Allende Socialist Action, and represented by human rights lawyer Eduardo Contreras. The subsequent investigation, led by investigative magistrate Mario Carrozza, ordered numerous tests to be carried out by national and international experts**. None offered conclusive evidence that the gunshot wounds inflicted on the corpse had been caused by a weapon other than one known to have been in the possession of President Allende.** No evidence or witness testimony was offered that could sustain the thesis of third party intervention or an armed confrontation. Accordingly, both the magistrate and the Appeals and Supreme Courts, concluded that 'the incidents leading to the death of Salvador Allende Gossens proceeded from a **deliberate act in which he voluntarily took his own life.** No third parties intervened, either in the commission of the crime or as accessories.' The Supreme Court's ratification of the lower court verdict was the object of a dissenting opinion by Judge Dolmetsch, who voted to impose a temporary, rather than permanent, suspension given his conviction that the uncertainty as to the intervention of third parties had not been fully dispelled, and in view of the historical significance of the case.			
30) Appeals Court specifically orders charges for sexual violence: Bárbara Uribe case ***[Barbara Uribe cont./]***	808-2014	Santiago Appeals Court	28/8/14	Barbara Uribe, an activist of the left-wing MIR movement, was forcibly disappeared, along with her partner, in July 1974. On 28 August, in the course of the second judicial investigation of these same crimes (see above, case no.2, 30/9/94) the Appeals Court for the first time **specifically ordered an investigative magistrate to include sexual violence among the list of charges** (under the criminal code figure of 'illegtimate pressures' (*apremios ilegítimos*), the only relevant chargeable offence that was in force at the time of the crime),
	SIGNIFICANCE: The Santiago Appeals Court ordered special investigative magistrate Jorge Zepeda to bring charges for *apremios ilegitimos* against former DINA secret police agent Basclay Zapata Reyes, for sexual violence committed against Barbara Uribe in the context of the enforced disappearances of Barbara and her partner, Edwin Van Yurick. The Court thereby **recognized that sexual violence was employed by regime agents as a method of torture**. The judge duly charged Zapata Reyes, on 23/9/14, with *apremios ilegitimos*, although in the final first instance verdict, of 16/11/2015, this charge was dropped and Zapata was only charged with aggravated kidnap. Zapata died on 3 December 2017 before the sentence could be finally confirmed before the Supreme Court. In the main case that had given rise to this 'branch' investigation, the Supreme Court sentenced four agents, on el 17 September 2019, for kidnap (Case code Rol. 38.638-1994) See Event #2, above.			

31) Civil claims (those without accompanying criminal charges) reassigned, to the Criminal Bench of the Supreme Court.	Act 233-2014	Supreme Court	26/12/14	In an administrative redistribution of cases, the Supreme Court resolved that **unaccompanied civil claims** (those which originated without an accompanying criminal complaint) which reached Supreme Court level **would henceforth be seen by the Criminal Bench** (instead of, as previously, by the Constitutional Bench). The change produced more consistent jurisprudence, and also **results more favourable to relatives and other civil claimants**, since while the Criminal Bench recognized the inapplicability of the statute of limitation to both civil and criminal cases for crimes against humanity, the Constitutional Bench insisted on applying the four-year statute of limitation set down for ordinary claims.
	SIGNIFICANCE: In December 2014, a plenary sitting of the Supreme Court agreed a new internal division of labour whereby all cases still being seen under the now-superseded, written, investigative, justice system* would, if they reached Supreme Court level, be seen by the Second (Criminal) Bench, irrespective of their nature (criminal, civil, or tax law). The effect of this administrative measure on human rights cases was positive for claimants. **Previously, civil demands against the state that were presented separately from criminal actions had been seen at Supreme Court level by the Constitutional Bench, which invoked the statute of limitation to deny them.** Henceforth these claims, like those associated with criminal actions, would be seen by the Criminal Bench. This bench rejects the argument of the State Defence Council, which attempts to deny state liability by arguing prescription and-or by claiming that relatives and survivors have already received sufficient reparation from administrative programmes. **In the first standalone civil claim seen under the new arrangements, the Criminal Bench upheld a civil indemnization award** to relatives of Bernardo Meza Rubilar, forcibly detained and disappeared since 17 September 1973, in case RoI 23441-2014, 28 April 2015. A criminal case for the same crime had previously been resolved, on 23 Oct 2014, when the same Criminal Bench ratified guilty verdicts against three former state agents for aggravated homicide and kidnap. ** This system, in which judges oversee both investigation and adjudication, was phased out from the mid-1990s in favour of an oral, adversarial system. However, under the terms of the reform, cases involving dictatorship-era human rights violations are still seen under the old system.*			
32) Inter-American Court verdict in Maldonado and others v. Chile.	N/A	Inter-American Court of Human Rights (IACtHR)	2/9/2015	In the aftermath of the coup, Omar Maldonado Vargas and 11 other members of the Chilean Air Force were illegally detained by their own comrades because of **their refusal to take part in or recognize the overthrow of the constitutional order**. All were subjected to **torture before being found guilty of treason** in a spurious proceeding before a Court Martial, RoI 1-73, initiated on 14 September 1973. The sentences, of up to 5 years, were confirmed on 26 September 1974 and 10 April 1975, before being commuted to exile.

<table>
<tr><td></td><td colspan="4">SIGNIFICANCE:
The IACtHR found the state of Chile to have been in breach of its Convention obligations in delaying the initiation of a criminal investigation into the torture inflicted on Omar Maldonado and 3 more of the 12 casebringers (the eight remaining, had already had a criminal case for torture resolved before the Chilean courts – known as the 'AGA [War Academy] Torture case'. Before the IACtHR, the casebringers alleged that Chile had failed to provide a mechanism whereby they could have the spurious sentences passed against them by a dictatorship-era Court Martial declared null and void. The IACtHR, in its ruling, separated the facts of the matter into two time periods: (a) prior to 2005, the date from which a constitutional reform gave the Supreme Court jurisdiction over sentences passed by Courts Martial (b) From 2005 to the present. In regard to period (a), the Court found that victims had not been provided with a mechanism allowing revision of their past convictions. In regard to period (b), the IACtHR found that the state had continued to deny effective remedy to persons condemned by War Councils.
In reparation, the IACtHR ordered the state to: (i) make the Sentence and a summary of it public (ii) carry out a public act of acknowledgement of responsibility (iii) unveil a plaque containing the names of the claimants (iv) provide an effective, swift mechanism by which the complainants and others unfairly sentenced by dictatorship-era Courts Martial could have their sentences reviewed and, where appropriate, overturned (v) continue domestic investigation of the case (vi) pay a specified amount as non-material damages to the complainants. Point (iv) of the verdict gave rise to a request for revision by the judicial prosecutor of the Supreme Court in 2016 (see entry no. 34, below); and another, brought by the brother of a subsequently deceased victim (see entry no. 41)</td></tr>
<tr><td rowspan="2">33) US court finds a former Chilean soldier liable for the killing of Victor Jara

[Victor Jara civil case US contd./]</td><td>N/A</td><td>District Court in Florida, Orlando, USA</td><td>27/6/16</td><td>The Florida district court found former Chilean soldier Pedro Pablo Barriento Nunez civilly liable for his part in the torture and murder of emblematic folk singer Victor Jara in the Chile Stadium (now renamed 'Victor Jara Stadium') in September 1973. Barrientos, who later emigrated to the US, was ordered to pay USD20 million damages to Victor's widow and two daughters.</td></tr>
<tr><td colspan="4">SIGNIFICANCE:
The case forms part of a series brought by the US-based NGO Center for Justice and Accountability, www.cja.org , against US residents who were responsible for gross human rights abuses in their countries of origin. The cases are brought under two pieces of US domestic legislation, the Alien Tort Statute, ATS and the Torture Victim Protection Act, TVPA, which allow citizens of other countries (ATS) or US citizens (TVPA) to lodge civil complaints (though not criminal actions) against persons from other countries who are resident in the US, when those persons are suspected of having participated in certain grave crimes, including torture and other crimes against humanity. In a similar case from 2003, the sister of Chilean citizen Wilson Cabello, who was extrajudicially executed by the so-called ´Caravan of Death´ military operation in 1973, was able to establish the civil liability of US resident, and former Chilean soldier, Armando Fernández Larios. Other cases handled by CJA have led to the expulsion from the US of a former Salvadoran Defence Minister and other perpetrators, under the argument that they had broken migration laws by lying or omitting their past history in order to obtain US residency.</td></tr>
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34) Appeal (*Recurso de Revisión)*, Maldonado case *(see also nos. 32 and 41)*	27.543-2016	Supreme Court	3/10/16	The Judicial Prosecutor for the Supreme Court acted on a request from the Consejo de Defensa del Estado to **annul sentences handed down by 'wartime' military courts** (convened during the dictatorship's self-declared state of 'internal war') in the case "Chilean Air Force versus Bachelet and others". The sentences, many for treason, had been based on false confessions, extracted under torture, and other flagrant violations of due process. The request was made in pursuance of **compliance with Inter-American Court verdict 'Maldonado y otros'**, of 2/9/15, which ordered the state to provide swift and effective remedy to persons affected by spurious verdicts of this sort (see also no. 32, above and 41, below). The 'Bachelet' referred to in the case title is former Air Force General Alberto Bachelet, father of Chilean president Michelle Bachelet. He died as a consequence of torture inflicted by fellow officers.
	SIGNIFICANCE: The Supreme Court established this particular form of appeal (*recurso de revisión)* as the most appropriate figure in existing domestic law by which persons falsely convicted by Courts Martial between 1973 and 1975 can request revision and annulment of arbitrary and unjust proceedings and their outcomes. Dozens such applications were subsequently made and granted.			
35) Case of 5 'Frentistas'	8.642-2015	Supreme Court	21/3/17	In the **latest known date for a case of dictatorship-era enforced disappearance**, 5 young members of armed opposition group the Frente Patriotico Manuel Rodriguez were **kidnapped in September 1987 by state agents in retaliation** for the kidnapping, by leftist activists, of Army Colonel Carlos Carreño. The five victims, Julian Pena Maltes, Alejandro Pinochet Arenas, Manuel Sepulveda Sanchez, Gonzalo Fuenzalida Navarrete and Julio Munoz Otarola, **have never been found,** but it is believed that they were extrajudicially executed, and their bodies thrown into the sea near Quintay

<table>
<tr><td>disappeared in 1987 (DD)</td><td colspan="4">SIGNIFICANCE:
This case represents, at time of most recent edit (June 2020) the largest confirmed custodial sentence ever passed for crimes against humanity in Chile: 33 former agents of the CNI secret police were sentenced, 32 of them to custodial sentences. One of those sent to prison was Ema Veronica Ceballos Nunez, who thereby became the first female ex agent handed a jail sentence (of 10 years and 1 day, for aggravated kidnap). She was taken to the regular women’s prison of Santiago, a move which exposed the spuriousness of the argument made by (male) prisoners and their lawyers that they must be housed in special facilities to protect them from the general prison population. The final resolution of this case was paralysed for almost a year by an appeal alleging the inconstitutionality of the old criminal investigative system applicable to these cases.* The appeal was made to the Constitutional Tribunal in March 2016. Although it was eventually unsuccessful, during the almost 12 months during which it was pending, the Supreme Court was not able to emit its final verdict. By the time the Constitutional Tribunal did finally disallow the appeal, paving the way for the final verdict, 3 of the 33 agents found guilty had fled and were in hiding. The defence lawyer representing one of them hinted that the reasons included fear of being incarcerated in a regular prison facility (Colina I, rather than the specially-designated and purpose-built Punta Peuco facility). The Constitutional Tribunal moreover attempted in its verdict to impose general interpretive principles on magistrates resolving future human rights cases, which exceeds the Tribunal’s mandate (which is restricted to resolving the specific case brought before it).
* see explanation above, entry no. 31</td></tr>
<tr><td rowspan="2">36) Denial of access to the Valech Commission database

[Valech database access contd./]</td><td>791-2017</td><td>Appeals Court of Santiago</td><td>4/9/17</td><td>The Santiago Court of Appeal upheld a decision by the state Council for Transparency (Consejo de Transparencia), a body which oversees the country’s access to information laws. The decision was to continue to prevent the state National Human Rights Institute, Instituto Nacional de DDHH, INDH, from allowing public or judicial access to the database of the Valech Truth Commission</td></tr>
<tr><td colspan="4">Haydee Oberreuter Umazabal, and other survivors of political imprisonment and torture, had for some time been campaigning to declassify the archives of the Valech truth commission (both iterations – 2004/5 and 2011), in order to allow judicial and/or public access. The commission’s files, which are under the legal guardianship of the INDH, are subject to a 50-year embargo. Efforts to alter the situation by passing new legislation failed to get the necessary parliamentary votes, in 2016 and again in 2017. Notwithstanding these failures, various civil society efforts did manage to obtain partial access to individual claimant’s case files, either on direct request from the relevant person or, with that person’s consent, via release to the competent judicial authorities. This new appeal however sought to widen the terms of this partial access to include not only individual case files but also the Commission’s full database. The contention was that this would allow full revelation and analysis of the systematic practice of torture, as well as facilitation cross referencing of information across individual cases. The INDH’s position was that the existing law did not permit them to grant such access. Haydee Oberreuter made representations before the Council for Transparency, citing Access to Information law 20.285. Her action was however rejected in January 2017 in case Rol. 3065-16. The action before the Appeals Court in case 791-2017 constituted an appeal against the legality of that rejection. The appeal was however disallowed, meaning that the original denial of access remained in force. In March 2018, the petitioner and others brought a complaint before the Inter-American Commission on Human Rights for denial of truth, justice, reparation and memory in regard to survivors of political imprisonment and torture.</td></tr>
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37) First custodial sentences against a civilian perpetrator: Paine case, Collipeumo episode	1.568-2017	Supreme Court	16/11/17	In the days immediately following the 11 September 1973 coup, **uniformed police and civilians extrajudicially executed or forcibly disappeared a total of 70 men in the rural community of Paine**, close to Santiago. The victims included leaders of the land reform movement. Truck owner Juan Luzoro led a group of civilians who collaborated actively in the transportation and killing of the victims. In the Collipeumo episode, 5 men were shot before being thrown into an irrigation canal. Only one of the men survived.
	SIGNIFICANCE: This definitive Supreme Court ruling upheld a verdict by the San Miguel Court of Appeal, which imposed a 20 year custodial sentence on Juan Francisco Luzoro Montenegro for 4 counts of aggravated homicide and one of attempted homicide, all committed on 18 September 1973. **Luzoro thereby became the first civilian non-member of the security or intelligence services to have been sent to prison for his part in crimes against humanity.**			
38) Constitutional Tribunal prevents carrying out of final sentences: Cerro Moreno case	4180-17-INA	Constitutional Tribunal	17/1/18	On 5/12/17 the Supreme Court sentenced 3 former soldiers for the aggravated homicides of Nenad Teodorovic, Elizabeth Cabrera Balarriz, and Luis Munoz Bravo. The defence acting for perpetrator Sergio Gutierrez Rodriguez presented a **request for nullification** on 10/12/17. This contravenes Art. 97 of the Organic Court Code (Código Orgánico de Tribunales), which states that **no further recourse is admissible against sentences that have been finalised by the Supreme Court.** Notwithstanding, on 17 January 2018 the Constitutional Tribunal declared the action admissible, by a 4-1 vote. The effect was to **paralyse the case** until June 2018, when the action was finally unanimously rejected in an 8-0 vote. Despite the clearly frivolous nature of the application, a 5-3 majority of the judges ruled that the appellants were not ordered to pay costs, on the grounds that there were "plausible ground for litigation".

[Cerro Moreno contd./]	**SIGNIFICANCE:** This incident was part of a series, beginning in November 2015, in which perpetrators of crimes against humanity began to **have recourse to the Constitutional Tribunal in efforts to impugn final Supreme Court verdicts** or delay their coming into effect, in the founded belief that the Tribunal would be more likely to extend the impunity that the Court has ceased to offer in recent times. In declaring these efforts admissible, **the Tribunal appears to be overreaching its own constitutional and legal mandate**. Art. 76 of the Constitution, for example, states that the judicial branch is the only actor authorised to ensure that its judgments are carried out. Moreover, during the course of resolving an action that should never have been admitted, the Tribunal ordered the case in question to be placed on hold, despite being informed three times in writing by the Supreme Court that there were no further matters pending other than the implementation of the sentence. The defence's presentation before the Tribunal moreover made reference to substantive matters to do with the substance of the case – about which the Tribunal is not empowered to pronounce – by, for example, impugning the constitutionality of specific precepts in the Criminal Code. The defence alleged, *inter alia*, that the passing of a 15-year sentence on a person aged 75 was tantamount to a life sentence, citing 79 as the median lifespan in Chile.			
39) Lara vs. the Treasury (*Fisco*): Court recognises that sexual violence may constitute a crime against humanity	31.711-2017	Supreme Court	23/1/18	A female survivor of political imprisonment and torture, who had been detained by uniformed police in 1984**, brought a civil claim for reparation in the form of indemnization for moral damages, over rape committed by a group of police officers** while she was in custody and unconscious. A criminal case had already been concluded over the incident.
	SIGNIFICANCE: This is either the first, or one of the first, cases in which the Supreme Court explicitly recognised the appropriateness of acknowledging the right to reparation via the judicial route (in the form of a civil claim) to a survivor of rape on the grounds that the **context clearly constituted the attack as a crime against humanity** (therefore not subject to statutes of limitation in either its criminal or civil aspect). In its reasoning, **the Court recognised that sexual violence was a systematic practice during the dictatorship, to the point that certain episodes of it can be found to constitute crimes against humanity**. Previously, sexual violence had always been treated as an isolated incident, and/or was considered, if at all, only as secondary to other crimes. On these grounds, the statute of limitations was usually treated as having expired. With the present verdict, the Court instead adopted a more progressive line, **in keeping with interpretations by the European Court on Human Rights or the Ad Hoc Tribunal for the Former Yugoslavia, acknowledging the gravity of crimes of a sexual nature when committed in contexts of dictatorship or internal armed conflict.**			
40) Lonquén case	30.170-2017	Supreme Court	18/6/18	On 7 October 1973, 15 men were kidnapped and then killed by uniformed police in the Isla de Maipo area. Their remains were hidden in **lime kilns in the Lonquén district**, and discovered accidentally in November 1978. The find was reported in secret to the **Vicaría de la Solidaridad**, the Catholic Church's human rights organisation. Although the case was subsequently formally reported to the courts, it was handed to military jurisdiction and immediately closed through invocation of the amnesty

				law. The remains of the dead were moreover hidden once again, being taken away and disposed of in a common grave while relatives awaited their arrival at the country's main cathedral. Not until 2006 were the remains re-exhumed. Some were restored to families in 2010, the rest, in 2017, upon the conclusion of forensic work by the national Medical Legal Service in the case.
	SIGNIFICANCE: The finds at Lonquén produced major national and international reverberations, since they came to represent **the first concrete evidence that at least some of those hitherto considered to be disappeared, had in fact been executed by the regime**. Journalist Alejandra Matus calls it "**the end of the adjective "presumed" in relation to disappearance".** After the find was made public, judge Adolfo Bañados, assigned the case on behalf of the Santiago Appeals Court, established that uniformed police had been involved, and that some of the victims had been thrown alive into the kilns. However, he subsequently renounced jurisdiction in favour of the military justice system, which definitively suspended the case, invoking Decree Law 2.191 – **the 1978 Amnesty Law.** In May 2012, investigative magistrate Adriana Sottovia declared that suspension without effect, after the San Miguel Court of Appeal had ordered Judge Hector Solís, previously in charge of the case, to bring charges in August 2011. The definitive sentence issued by the Supreme Court in June 2018 **sentenced 6 former police officers to between 15 and 20 years' imprisonment** for homicide "with malice aforethought" (*con alevosía*). One more officer was sentenced to a 60-day suspended sentence for each of 11 counts of kidnap. The Court, like the first instance and appeals magistrates, emphasised the nature of the offences as a crime against humanity under international law.			
41) Sentence revising and invalidating a court martial, Temuco ***(see also entries no. 32 and 34)***	1.488-2018	Supreme Court	25/6/18	On 31 October 1973, 23 people, amongst them Enrique Lagos Schuffeneger, were **unjustly convicted by a military court** applying a wartime court martial procedure, in case Rol. 2.025-1973, in the city of Temuco.

	SIGNIFICANCE: A request for revision of sentence placed by Humberto Lagos Schuffeneger on behalf of his now-deceased brother Enrique led to the original court martial sentence of 1973 being declared invalid**. All effects of the sentence were declared null and void**, and the 23 people originally unjustly sentenced were declared to be absolved, due to their innocence having been proven. The cause cited was as specified in Art. 657 no. 4 of the Criminal Procedure Code: "when, after a guilty verdict has been reached, **some previously unknown fact or document should appear whose nature allows the innocence of those previously convicted, to be established**" (authors' unofficial translation). The grounds stated by the Supreme Court for considering this article applicable were: 1. The Inter-American Court of Human Rights verdict of 2/9/15 in the case Maldonado and others; considerations 5 and 6 (see above, entry no. 28) 2. Supreme Court verdict RoI. 27.542-2016, of 2/10/16., invalidating a court martial sentence in case I-73, Aviation, considerations 11 and 12 (see entry no. 31, above) 3. Contents of the Rettig and Valech truth commission reports describing the operation of courts martial in the early years of the dictatorship (considerations 7,8,9 and 10) 4. Other cases in which those responsible for torture of survivors of courts martial had been found guilty (consideration 13) The case represents the continuation of a criterion first adopted by the Supreme Court in the Maldonado case (see entry no. 31, above), declaring **the *recurso de revision* to be the appropriate legal mechanism for offering legal remedy to those unfairly convicted by courts martial between 1973 and 1975.**			
42) Inter-American Court verdict, Ordenes Guerra and others vs. Chile	N/A	Inter-American Court of Human Rights (IACtHR)	29/11/18	Between 2003 and 2004, the domestic judiciary rejected civil claims presented by relatives of 7 victims of extrajudicial execution or forced disappearance whose cases have been recognised by the Chilean state in truth commission reports. **The claims were rejected on the grounds that ordinary civil law statutes of limitation applied, and had expired.** [The practice of the domestic courts on this point **had changed in the meantime,** and **civil demands** are at time of writing (June 2019) **generally conceded]** (see entry no.31, above). The Inter-American Court found the Chilean **state in breach of its international obligations in regard to reparation**, ordering indemnization to be paid to each family. The Court made reference specifically to Arts. 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with Arts. 1.1 and 2.

<table>
<tr><td>[Ordenes Guerra v Chile cont./]</td><td colspan="4">SIGNIFICANCE:
This was the first sentence by a regional court which affirmed the imprescriptibility of civil actions for the reparation of harm caused by internationally defined crimes, specifically, crimes against humanity. The sentence also affirms that the imprescriptibility of such actions proceeds from the state's obligation to provide reparation, given the nature of the acts (paragraph 95). The Inter-American Court also recognised that the Chilean Supreme Court's interpretation on this matter had improved since the complaint was originally brought, with the transfer of such cases to the Criminal Bench, which subsequently declared indemnization actions to be imprescriptible, a change which the Inter-American Court welcomed as consonant with the judicial branch's duties to exercise effective control of conventionality (paragraphs 100 and 101).Moreover, based on the principle of complementarity, the Inter-American Court directly ordered the state of Chile to pay certain amount of money to the relatives of victims and claimants in the case, as reparation for moral harm caused by state agents (paragraphs 108-124).</td></tr>
<tr><td rowspan="2">43) Initial sentence (primera instancia) in the case of the death of former Chilean president Eduardo Frei Montalva</td><td>7.891-B</td><td>Special Investigative Case Magistrate Alejandro Madrid Chroharé</td><td>30/1/19</td><td>On 22 January 1982, former president of the Republic Eduardo Frei Montalva (1964-70) died in the Santa Maria clinic, Santiago. At significant figure in opposition to the dictatorship, Frei spearheaded opposition to the fraudulent plebiscite that approved a new constitution in 1980. On 18 November 1981, he was operated on for a gastric hernia. He was operated on again on 6 December 1981, by a different surgeon, Patricio Silva Garín. Two days later, he suffered septic shock and was transferred to intensive care. Around the same time, a message was received alleging possible deliberate poisoning, and doctors discovered Frei's immune system to be severely impaired. The second operation had caused acute sepsis, leading to Frei's death on 22 January 1982. Despite the unusual circumstances, no autopsy was ordered, nor was the incident reported to judicial authorities. A medical team from the Catholic University removed organs from the body, without authorisation from the family or treating physician. In the new investigation, two experts testified that they had discovered traces of thallium and mustard sulphate in the body. Other new facts were revealed about the case, now officially considered a homicide. These include neglect of the former president's personal security on the part of authorities, telephone intercepts and other hostile acts, and the infiltration of military officers and other security service agents into the former president's inner circle.</td></tr>
<tr><td colspan="4">SIGNIFICANCE:
This initial sentence is the first ever imposed in Chile for the death of a former president of the Republic, treated as a crime against humanity. Patricio Silva Garín was sentenced to 10 years; Raúl Lillo Gutiérrez and Luis Alberto Becerra Arancibia to 7 years, and Pedro Samuel Valdivia Soto to 5 years - all custodial sentences, for homicide. Sergio González Bombardiere and Helmar Rosenberg Gómez were given suspended sentences of 3 years for homicide. The case is not yet definitively closed, with two remaining possible stages of appeal.</td></tr>
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44) "Quemados" case (Carmen Gloria Quintana and Rodrigo Rojas): initial sentence (*primera instancia)*	143-2013	Special Investigative Case Magistrate Mario Carroza Espinosa	21/3/19	On 2 July 1986, three military vehicles were patrolling the Estación Central district of Santiago, during a national protest. A patrol led by Lt. Pedro Fernández Dittus, detained Rodrigo Rojas Quintana, a young photographer, and Carmen Gloria Quintana, a student, accusing them of having taken part in disturbances. They were beaten, threatened, and apprehended. Two further patrol vehicles arrived, commanded by Lts. Ivan Figueroa Canobra and Jose Castaner González. The agents **doused the youths in petrol and set fire to them**, using an improvised Molotov cocktail. After this horrendous attack, Rodrigo and Carmen were driven 21 km to the Quilicura district, and **abandoned by the roadside.** Rodrigo died in hospital, having suffered second and 3rd degree burns to 65% of his body. Carmen Gloria survived, with burns to 62% of her body and extensive facial scarring.
	SIGNIFICANCE: This case was initially heard during and immediately after the dictatorship, by ordinary then military courts. In August 1989, the Second Military Tribunal of Santiago sentenced Fernández Dittus to just 300 days (suspended), for the **'misdemeanours'** of homicide and serious bodily harm. On appeal, in January 1991, a court martial upheld the conviction only in relation to Rodrigo, absolving for the injuries to Carmen Gloria. In 1994, the Supreme Court declared that appeal proceeding inadmissible, replacing it by a Supreme Court verdict, on 14 December 1994, confirming the initial charges but imposing a **total sentence of just 600 days (custodial sentence).** The new investigation, undertaken by Judge Mario Carroza, made use *inter alia* of **eyewitness testimony from a former conscrip**t to find that others, aside from Fernández Dittus, had been involved in both the crimes and their subsequent cover-up. The new first instance verdict sentenced Julio Castañer González, Iván Figueroa Canobra and Nelson Medina Gálvez to 10 years imprisonment as authors of the aggravated homicide of Rodrigo and the attempted homicide of Carmen Gloria. Luis Zúñiga González, Jorge Astorga Espinoza, Francisco Vásquez Vergara, Leonardo Riquelme Alarcón, Walter Lara Gutiérrez, Juan González Carrasco, Pedro Franco Rivas y Sergio Hernández Ávila were sentenced to 3 years and one day as accomplices. Two more agents, including, Fernandez Dittus, were absolved. **Fernandez Dittus was absolved because the court decided to recognise the principle of double jeopardy,** in spite of acknowledging that the previous investigation did not meet minimum standards of impartiality.			

45) *La Tercera* newspaper ordered to publish retraction of fake news published during the dictatorship: case of Jorge Oyarzún Escobar and Juan Escobar Camus **[victims of extrajudicial execution]**	84.116-2018	Appeals Court of Santiago	12/4/19	A definitive Supreme Court verdict established in 2017 that Jorge Oyarzún Escobar, Juan Escobar Camus y José Muñoz had been victims of aggravated homicide constituting crimes against humanity. In response, on 24th of October 2018, family members of Jorge and Juan wrote to 3 newspapers - *El Mercurio, Las Ultimas Noticias,* and *La Tercera* - requesting they publish a **rectification of an article each had published, on 2 October 1973, accusing the victims, along with seven others, of having been "extremists"** and referring to their murders as "executions" in conformity with emergency law (Bando) no.24. While the two other newspapers both published the required retraction, *La Tercera* failed to respond. The families accordingly took legal action requiring the rectification, based on constitutional and human rights principles.
	SIGNIFICANCE: This is the **first time that a national court has ordered such a rectification.** The appeals court found unanimously in favour of the families, taking particularly into consideration: (i) that the victims had been acknowledged by the Supreme Court as victims of crimes against humanity; (ii) that the **right to rectification or reply is expressly recognised in the international legal order,** in favour of those who are negatively affected by any journalistic publication proceeding from social communication media. Normative sources cited included articles 11 and 14 of the American Convention on Human Rights, applicable in accordance with article 5 subsection 2 of the Chilean Constitution, in relation with article 19 subsections 1, 4, 12 and 26 of the same constitution. The court ordered that the newspaper's owner, COPESA S.A., to publish in *La Tercera* the rectification that was required of it in October 2018, in the terms in which the request was made: i.e. with a public apology and in the same tone as the publication of 1973, in the form of an article of the same length and prominence as the original false report. The newspaper appealed the sentence. The result is pending (at end May 2019) from the third bench of the Supreme Court: Rol. 11044-2019			

46) A family's civil claim is denied for the second time: relatives of Mr. Francisco Baltazar Godoy Román ***(see also Events #31 and #42)***	20.520-2018	Supreme Court	14/11/2019	Relatives whose initial civil claim had been rejected, due to its having been seen by the Constitutional Bench of the Supreme Court (see above, Event #31) submitted a new claim, motivated in part by the change of criteria that had taken root in the interim, after such claims were reassigned to the Criminal Bench (see Event # 31, above). The new claim was however also rejected, this time on the grounds that the case had already been resolved (*'cosa juzgada'*, a version of *ne bis in idem).* The claim was brought by family members of Francisco Baltazar Godoy Román, an agricultural worker and father of eight, aged 49 at the time of his disappearance. Mr Godoy, president of the smallholders' federation of Buin and Paine, was illegally detained by officers from the Paine police station on 18 September 1973 at the "Huiticalán" cooperative, close to Paine's Aculeo lake. He is still disappeared.
	SIGNIFICANCE: The first civil claim for moral damages made by Mr. Godoy's family, submitted in 2008, was rejected by the Supreme Court's Constitutional Bench in 2013, on the grounds that the statute of limitation for civil actions had expired, despite the fact that it had been accepted at first instance and Appeals Court level. The rejection was made prior to the change of Bench, and criteria, mentioned in Event #31 above: had the claim been resolved after the change, it is likely that the finding would have favoured the family. This initial rejection gave rise to a complaint before the Inter-American Commission on Human Rights, alleging Chile's failure to comply with its duties under Arts. 1.1, 2, and 63.1 of the American Convention on Human Rights (Pact of San José). The complaint is still in the phase of consideration of its admissibility. Nonetheless, in **2017,** the family submitted a new civil claim, this time as part of the criminal investigation of the crimes committed against Mr. Godoy. The first instance and San Miguel Appeals Court decisions both rejected the civil claim aspect due to the existence of a prior claim, already resolved in 2013. This second denial was ratified, by a 3-2 majority, by the Supreme Court's Criminal Bench in November 2019. This second rejection has given rise to a new complaint before the Inter-American Commission, submitted on 12 May 2020. The complaint again alleges that Chile has failed to comply with its duties under arts. 1.1, 2 and 63.1 of the American Convention, having denied, for a second time, the family's right to reparation albeit on different grounds). The complaint argues that this position contravenes both international law and the Inter-American Court's ruling in the Órdenes Guerra case, which exhorted the State to seek a solution for others denied justice due to the application of statutes of limitation (Ordenes Guerra, para. 137) (See Event #42, above).			

47) Army intelligence officers are charged with destroying evidence. The crime took place in the post-transition period	1775-2017	Specially-designated first instance human rights case judge Mario Carroza Espinosa	07/02/ 2020	Judge Mario Carroza brought formal charges against three retired Army officers, all members of the Army Intelligence Directorate, Dirección de Inteligencia del Ejército, DINE, for **removal or destruction (incineration) of microfilm archives belonging to the dictatorship-era CNI intelligence agency, successor of the notorious DINA secret police.** The offences took place in the years **2000 or 2001,** in the Army Intelligence School located in Nos, San Bernardo. The indivduals charged were: then-Army Director of Intelligence, Eduardo Jara Hallad (as autor of the crime); and former Army Chief of Staff Carlos Patricio Chacón Guerrero (accomplice). The destruction was brought to public attention in 2017 in a New York Times article by Chilean investigative journalist Pascale Bonnefoy. The article sparked a criminal complaint (*querella*), submitted by the 'Londres 38' memory site in the pursuit of its longrunnng campaign 'Toda la Verdad, Toda la Justicia', which seeks to draw attention to the matter of still-secret official archives.
	SIGNIFICANCE: The incident provides corroborating evidence of the existence of a military 'pact of silence', since it demonstrates that a decade after transition, **high-level networks within the Armed Forces were still active in efforts to protect the institution and its members by destroying potentially compromising evidence of human rights violations**. The case, which is ongoing, has two principal lines of investigation. The first deals with the **incineration, just months before the dictatorship ended, of records of Courts Martial** that had been carried out in its early days. The second deals with this incineration of records, taking place a decade after the armed forces had supposedly been subordinated to civilian command and moreover around the same time as the **Mesa de Diálogo** roundtable. During the Mesa process, representatives of the Army high command repeatedly insisted that their institution did not hold archives or information that could be relevant to determining the fate of the Disappeared. According to the former officials charged in this case, the incineration of potentially compromising material was carried out under orders and was duly communicated to their superior officers.			

	12.196 - 2018	Supreme Court	16/3/ 2020	The Supreme Court confirmed an Appeals Court verdict that declared the 1979 killing, by police, of Mercedes Luzmira Polden Pehuén, to be subject to a **statute of limitation.** The decision hinged on the classification of the killing as an 'ordinary' crime, rather than a crime against humanity (to which statutes of limitation cannot be applied). The Supreme Court's confirmation came about in part due to **deficiencies in the content of the appeal presented by the state Human Rights Programme office.**
48) Case of Mercedes Polden Pehuén **(victim of extrajudicial execution)**	**SIGNIFICANCE:** Mercedes Polden was killed by uniformed police officers (Carabineros) in May 1979, in Santiago's Pablo de Rokha housing district. The incident appears in the Rettig truth commission report. In the first instance verdict of the investigation into her death, human rights case judge Marianela Cifuentes classified the killing as a crime against humanity (case code Rol 157-2011). The San Miguel Court of Appeal however reversed this classification, on the grounds that in their view there was no discernible persecution of "members of a sector or group considered…. [by the police] to be in opposition to them or to particular interests" ('*integrantes de todo o parte de un sector o grupo que aquél considera contrario a sí mismo o a determinados intereses'*). The court further found that it had not been proven that the victim was "persecuted for political, racial or religios motives" ('*objeto de persecución por motivos política, raciales o religiosos').* Case code (Rol) 236-2017, *considerando* 5 and 6). The Appeals Court thereby adopted an **extremely restrictive and retrograde definition of crimes against humanity,** refusing to acknowledge that these can be configured by the presence of a generalised or systematic attack on a civilian (non-combat) population. The Human Rights Programme Unit of the Ministry of Justice and Human Rights, sponsor (*querellante*) of the criminal prosecution, elevated the case to the Supreme Court in an effort to have the Appeals Court's verdict overturned. The Programme's submission was however **rejected on formal grounds.** According to the Supreme Court, the submission **failed to adduce specific norms of international human rights law, or international criminal law**, such as the UN Convention on Imprescriptibility, Art. 7 of the Rome Statute, or the American Convention on Human Rights, that would have allowed the crime to be classified as a crime against humanity, not subject to statutes of limitation, as has become the recent settled practice of the criminal bench of the Court. Instead, according to the Court, only **possible infractions of the domestic criminal procedural code** were mentioned. The fact that the Court made this consideration explicit makes it plausible to assume that a different outcome would have been achieved had the Programme's submission included these elements, but at the same time, it should be pointed out that the Criminal Bench could have invoked its powers to quash and replace the lower court's verdict *ex oficio*, given that the legal arguments involved hinge around treaty and *ius cogens* obligations.			

49) COVID-19 commutation of sentences: right-wing parliamentarians delay general prisoner release by appealing to the Constitutional Tribunal in an attempt to force the inclusion of perpetrators of crimes against humanity	8574-20 CPT	Constitutional Tribunal	16/04/ 2020	In March 2020, the **coronavirus pandemic led to the** presentation, by the executive branch, of a draft legislative bill to allow some senior citizens, pregnant women, and women with infants under two years of age, to serve the remainder of their custodial sentences under house arrest. The bill, Boletín 13.358-070, proposed to **exclude** from the measure, **convicted criminals found guilty of serious crimes, including crimes against humanity**. On 31 March, a group of right wing senators attempted to have the content of the draft bill declared **unconstitutional.** Their petition before the Constitutional Tribunal led to public hearings, in which human rights organisations, and two organisations favourable to military perpetrators, took part. The Senators' petition was subsequently rejected by a 7-3 majority of the Constitutional Tribunal's members. On the same day the first petition was due to be heard, a group of right-wing lower house representatives presented (then later withdrew) a second petition. The combined effect of the two submissions was **paralysis and delay to a time-sensitive and urgent measure,** designed to alleviate a public health emergency, due solely to the desire to **have it benefit perpetrators of crimes against humanity**. The final outcome was that the unmodified Bill became law (Law 21.228) on 17th April.
	SIGNIFICANCE: Set against recent controversy about **intervention by the Constitutional Tribunal in human rights cases**, the actions of one sector of the political right – raising objections to a bill proposed by their own executive – appeared to be yet another attempt to appeal to the sympathies of certain members of the Tribunal toward perpetrators of dictatorship-era crimes. Another Tribunal member, voting to oppose the appeal, stated: "this petition has been presented at a critical juncture, with national and international society threatened by a lethal pandemic. [its outcome] being to postpone, for crucial days or even weeks, the effects of this law. This deprives us all of time needed to save lives, all for the sake of an exercise in litigation that could be summed up as "'my' people get out or no-one gets out", instrumentalising the pandemic, and the delay created in for ordinary prisoners, as a tool to pressure the State into failing to appropriately punish those responsible for grave human rights violations" (Constitutional Tribunal Ruling, Case Code (Rol) 8574-20 CPT, Reasoning of Judge Rodrigo Pica Flores, para.66, our translation). As this extract shows, it is impossible to rule out the possibility that the resultant delay increased COVID-19 risk among the prison population set to benefit, whose release was put on hold until the petition could be resolved. Established patterns within the Tribunal were borne out in the result, with judges Aróstica, Romero and Vásquez making up the minority vote in favour of the failed petition. Substantively, it was successfully argued that the bill's proposed exclusion of those convicted of particularly serious crimes did not constitute discrimination, but "a distinction based on objective and proportionate criteria". It should be borne in mind that **the measure was not introduced as a sentencing benefit, but as an emergency public health measure,** designed to reduce the risk of contagion in Chile's overcrowded prison system. **The two facilities in which almost all Chile's perpetrators of crimes against humanity are currently detained, present highly superior conditions,** and **do not suffer from the overcrowding** that motivated the special measure.			

	1.734 -2017	Santiago Appeals Court	13/04/ 2020	In a poorly reasoned ruling which caused public controversy, the three-person Eighth Bench of the Santiago Appeals Court voted to reverse the convictions of 8 former DINA agents, and significantly reduce the sentences imposed on nine more, over the kidnap (enforced disappearance) and/or killing of 17 Communist Party activists detained-disappeared since 1976. The result, if confirmed, will be that no-one convicted for these grave crimes serves any jail time
50) Villa Grimaldi, episode Iván Insunza et. al. y otros: Santiago Appeals Court applies controversial reasoning to absolve convicted agents and reduce sentences to non-custodial length	In July 2017, first instance judge Leopoldo Llanos sentenced former DINA operations chief Pedro Espinoza and 16 fellow agents to sentences of up to 20 years for their part in the aggravated kidnap (enforced disappearance) of 16 people, and the aggravated homicide of another, in case Villa Grimaldi, episode Iván Insunza Bascuñán y otros. At appeal stage, the Eighth Bench decided to dissolve the sentences against almost half the agents, including Espinoza – initially sentenced to 20 years – and Rolf Wenderoth, former SubDirector of Intelligence, at the time in command of the Villa Grimaldi clandestine torture and extermination centre from which all the victims disappeared. The ruling also cut the remaining nine sentences to tiny, non-custodial, tariffs, via application of 'half statute of limitation' (always controversial, and in recent times discontinued in cases of disappearance, where it is accepted that the statute clock has not yet begun to run). The ruling is problematic from any number of points of view. First, it does not give adequate weight to the overwhelming cumulative evidence as to the central role in the DINA played by Espinoza at the time of the crimes, as attested to by another 40 confirmed sentences against him. It also fails to properly analyse the figure of command responsibility/ responsibility proceeding from effective control of an apparatus of power (*autoría mediata).* The verdict also applies the sentence reduction formula known as 'half prescription' to bring the remaining sentences down to levels of leniency rarely seen (though unfortunately not unprecedented: see the Parral case, Event #20, above). The verdict asserts that "the passage of time can never be a matter of indifference for law", (*considerando* 21), in contradiction with its own grudging recognition, elsewhere, that where crimes against humanity are concerned, law is indeed indifferent to the passage of time, to the point of ruling out the application of statutes of limitation. What jurist Juan Pablo Mañalich has described as a "self-evidently problematic" interpretation of the notion of 'malice' (*alevosía*) is offered to rule out the idea that the killing of Eduardo Canteros Prado was committed 'with malice aforethought'. The practical outcome of the verdict, if confirmed, is that notorious perpetrators Ricardo Lawrence Mires and Jorge Andrade Gómez will see their sentences slashed from 20 years, to 3 years 1 day (Lawrence Mires), or even a mere 541 days (Andrade). Both will accordingly be eligible for suspended sentences. Juan Morales Salgado and Ciro Torré also saw their sentences reduced from 18 and 15 years, respectively, to 3 years and 1 day (suspended sentences). All those convicted received sentence reductions and non-custodial sentences. Finally, it must be noted that this is not an isolated incident: the same Bench has offered similar or identical reasoning in previous cases, whether as a majority verdict or minority dissenting vote. The increased public reaction in this instance seems to be due to the higher profile of the case, and the large number of victims. Similar reasoning appeared – though it has not yet finally prevailed – in another Villa Grimaldi case, the "José Carrasco Vásquez" episode (Case code (Rol) 290-2016, minority opinion by judge Mera); and in the Operación Colombo case, episode "Ángel Guerrero Garrillo", Rol 260-201, currently pending final resolution before the Supreme Court.			

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