

Pinochet's legal victories may see him escape trial

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Chile's former dictator Augusto Pinochet has won a series of legal victories over the past week that may bring an end to the most prominent of the 190 criminal lawsuits filed against him since 1998.

In its most recent ruling, the Chilean Supreme Court on December 26 blocked an attempt by investigating judge Juan Guzman to begin questioning Pinochet on December 27. The judges decided by four votes to one that Pinochet, 85, can be interviewed by Guzman only after a medical panel decides that he is fit to stand trial.

Moreover, the four judges—Justices Alberto Chaigneau, Enrique Cury, Urbano Marín and Humberto Espejo—ruled that the medical and neurological report must be obtained within 20 days, acceding to the request of Pinochet's legal team for an early disposal of the case. Pinochet's lawyers expect their client to be declared unfit to stand trial.

The ruling extended two victories that the courts had handed Pinochet just before Christmas. On December 20 the Supreme Court upheld a December 11 ruling of the Appeals Court to overturn an arrest order that Guzman had issued against Pinochet on December 1, charging him with the kidnapping of 18 people and the murder of another 57 in the "Caravan of Death" case.

In the December 20 judgment, the same four Supreme Court judges accepted the defence argument that Guzman had acted illegally by indicting Pinochet before questioning him. They rejected two written depositions that Guzman had obtained from Pinochet during his house arrest in London. They set Guzman a 20-day deadline to formally question Pinochet, regardless of the outcome of medical tests.

Pinochet's lawyers predictably made an immediate application for the medical tests to be held first, making any questioning unlikely. They are confident of the medical verdict because on December 19, Appeals

Court judges ruled that the tests be conducted in a military-run hospital, rather than a civilian hospital. The Military Hospital is a known torture centre where many of Pinochet's victims were last seen.

The "Caravan of Death" was a military squad that roamed the country executing trade union leaders and supporters of the reformist government of Salvador Allende, toppled by Pinochet in the 1973 CIA-backed coup. Pinochet is accused of personally ordering the executions.

He was charged under a loophole in the amnesty law shielding the military from prosecution for pre-1978 killings. Where victims' bodies have not been discovered, their disappearances are classified as cases of kidnapping, an ongoing crime not covered by the amnesty.

Pinochet's lawyers hailed the December 20 ruling as a step closer to ending the Caravan of Death case. "Pinochet is not in any condition to face a hearing," declared Pablo Rodriguez, who heads Pinochet's defence team. Rodriguez, a leader of the pre-coup paramilitary fascist gang, Patria y Libertad, said the decision "reaffirms the constitutional guarantees of Senator Pinochet. The military hospital has his entire clinical history."

Under Chilean law, Pinochet will be able to claim frailty to escape criminal proceedings, without having to admit to being demented. His argument will be similar to the one that he used to escape extradition from Britain to Spain, where he faced charges for the murder and torture of Spanish subjects living in Chile during the 17-year military dictatorship. The British Labour Party government released Pinochet, after detaining him under house arrest for 503 days, on the grounds that he was too frail to withstand a hearing.

Representatives of the Association of the Families of

the Disappeared (AFDD) denounced the pre-Christmas rulings as examples of the continued coercion of the courts by the military and the government. Viviana Diaz from the AFDD said the decisions “showed that the courts would always be subject to pressure exercised by the Armed Forces, as from the right-wing and including the government... That is why the ruling didn’t surprise us.”

As the courts deliberated, the Socialist Party-led government agreed to the military’s demand to convene the National Security Council (NSC) to discuss the implications of the Pinochet case and the growing number of criminal charges proceeding against the military. President Ricardo Lagos indicated that the NSC would meet once the Supreme Court had ruled on Pinochet.

The NSC consists of the four military chiefs, the President, the presidents of the Supreme Court and Senate and the Auditor-General. Enshrined in Chile’s constitution, it effectively provides the military with a veto over civilian rule. The constitution states that the NSC can express “its opinion regarding any deed, event, act or subject matter, which in its judgement gravely challenges the bases of the institutional order or could threaten national security”.

As soon as the Supreme Court handed down its latest decision, Lagos kept his promise. He announced that the NSC would meet on January 2 to “interchange ideas over diverse proposals to strengthen reconciliation and national unity”. The demand for the halting of the trials against Pinochet and other officers will undoubtedly be the main topic of discussion. The military also wants an extension of the present amnesty to cover the years 1978 to 1990, overturning a series of life sentences against retired and active officers who committed crimes during that period.

Whatever precise deal the government strikes with the military, by convening the NSC Lagos is consecrating the military’s role in the political decision-making process. It will be the first meeting of the NSC since Lagos took office as the first Socialist Party President since Allende.

Despite the court rulings and Lagos’ response, some lawyers and human rights activists are still fanning hopes that Pinochet will be brought to trial.

After the December 20 decision, prosecution lawyer and Socialist Party deputy Juan Bustos said he still had

faith in the justice system “as none of the country’s courts, in particular the Supreme Court, has discarded the idea that the senator-for-life (Pinochet) be found responsible for human rights violations that occurred during his government”.

The December 26 ruling has, however, confirmed that the courts have paved the way for Pinochet to stave off prosecution indefinitely. This will not only set a precedent for the nearly 200 lawsuits representing 1,006 cases against Pinochet; it will significantly strengthen the military’s political standing.



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