

# Chilean court dismisses murder charges against Pinochet

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12 March 2001

The Santiago Court of Appeals handed former Chilean military dictator General Augusto Pinochet a partial victory last week, dismissing charges of masterminding dozens of murders and kidnappings in the “Caravan of Death” case. He now faces trial only on minor charges of being an accessory, with a maximum penalty of three to five years' house arrest.

Two judges relieved Pinochet of the murder and kidnapping charges, while a third, Cornelio Villarreal, voted to overturn the charges and have the case closed altogether.

In reducing the charges, the court asserted that the dictator did not become aware of the murders committed by a roaming death squad until after the event, even though Pinochet created the execution team himself to “expedite” trials against political opponents. He can only be tried, according to the ruling, for covering up the executions: “(Pinochet) did not denounce the crimes committed before the competent courts... (He) did not take any measures to have the crimes reprimanded.”

The ruling laid the blame solely on Pinochet's subordinate, General Sergio Arellano Stark, who headed the Caravan of Death. His squad summarily executed and illegally disposed of the bodies of 75 labour leaders and supporters of the reformist Popular Unity government that was overthrown by Pinochet's CIA-backed military coup in 1973.

In an extraordinary piece of legal reasoning, the court literally held that Pinochet could not have acted illegally because he did not have the legal authority to do so. Pinochet could not delegate powers to General Arellano that “he himself did not have,” the court stated. Therefore, “it can only be presumed that Arellano, exceeding his assignment, developed actions, individually, and with the other members of the

retinue.”

While Chile's Socialist Party-led coalition government, led by President Ricardo Lagos, insists that the courts are acting independently in the long-running Pinochet case, media outlets depicted the verdict as a compromise that would assist in ending the saga that has unfolded since Pinochet was detained in Britain in October 1998 after an extradition request by a Spanish judge, on charges of torture.

Pinochet's head lawyer, Pablo Rodriguez, welcomed the ruling for bringing the case a step closer to concluding in Pinochet's favour. “We cannot but recognise this as an important advance in our position, seeing as it has been made perfectly clear that General Pinochet neither ordered the murder nor kidnapping of anyone.”

For now, Pinochet remains under preventative arrest at his luxurious holiday estate, waiting the outcome of the second part of his appeal, which aims to have the trial closed on grounds of ill health. Two of the three appellate justices, who are expected to bring down a ruling later this month, opposed the stripping of Pinochet's immunity last August to allow the dictator's trial to proceed.

The Court of Appeals ruling may prove to be final, because it cannot be appealed to the Supreme Court, except on narrow grounds of “judicial revision”. It can only be seen as a political verdict, flying in the face of overwhelming evidence.

In the first place, it denies a central characteristic of Pinochet's 17-year military dictatorship—that as Commander in Chief of the Army and President of the governing junta he had to approve all decisions, including the actions committed by those he specifically delegated. The government's own Truth Commission has admitted that Pinochet's regime

executed more than 3,000 people.

Secondly, the Chilean military code of conduct specifically states that commanders always take responsibility for the actions of subordinates. In this case, Pinochet sent Arellano as his personal delegate to temporarily relieve regional commanders, such as General Joaquin Lagos.

Thirdly, General Lagos later produced a handwritten note by Pinochet approving the killings. Speaking on national television, General Lagos declared that the hit squad acted on Pinochet's personal orders.

Finally, far from simply failing to reprimand Arellano and his cohorts, Pinochet promoted them to the highest posts, precisely for committing atrocities that were being carried out on a mass scale in the military junta's first few months.

One member of the squad, Sergio Espinoza Bravo, became second in command of the feared DINA (secret police) death squad, which organised the murders of General Carlos Prats and his wife in Argentina in 1974 and Orlando Letelier and his aide in Washington DC in 1976—crimes for which Pinochet's extradition is currently being sought.

Despite such evidence, the court held that “it has not been established—even at the level of suspicion—that the accused Mr Augusto Pinochet had forced or induced Arellano Stark or the other accused in the case to carry out the crimes of homicide and kidnap”.

Victims' relatives and other Pinochet opponents held a demonstration outside the court last week, and expressed anger at the decision. Viviana Diaz, president of the Association of Families of the Detained and Disappeared, labelled the verdict a “joke” and accused the court of seeking to protect Pinochet. “For us, Pinochet is always going to be guilty of the crimes committed in this country, however much the courts try to call it by a different name.”

Some prosecution lawyers nevertheless expressed satisfaction with the ruling, presenting it as a provisional decision only. Carmen Hertz argued that the prosecution could still establish Pinochet's role in the next stage of the case. “We are comfortable (with the decision) because it has been confirmed that Pinochet is a criminal,” she declared.

Another lawyer, Hugo Gutiérrez expressed dissatisfaction with the verdict, but stated that he was pleased that Pinochet had not been acquitted

completely. “Definitively Pinochet stands accused,” he claimed, still holding out the hope that more serious charges would be proven against Pinochet. “I believe that Pinochet will be charged definitively in the capacity of mastermind.”

Just four days before the verdict, however, the *El Mercurio* newspaper published an interview with Supreme Court President Hernan Alvarez in which he called for a “political solution” to the “painful debate” over human rights abuses during the dictatorship. Alvarez said the courts were “facing problems with political connotations” and “we cannot be asked to resolve them”. It was an unusually blunt declaration of the pressure being applied by sections of the military and political establishment, including the senior judges, for the Pinochet case to be brought to a close.

The Lagos government has been making repeated attempts to secure such a political solution—in order to protect the military and cover up the ruling coalition's own role in granting Pinochet and his generals immunity from prosecution. Last year, the government reached an accord with the military, whereby the immunity covering homicide charges will apply to kidnapping cases, once the military demonstrates that its victims were indeed murdered, and did not simply disappear.



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