

EQUIPO NIZKOR BEHIND THE ARREST OF GENERAL PINOCHET



Chilean Army troops positioned on a rooftop fire on the La Moneda Palace 11 September 1973 in Santiago, during the military coup led by General Augusto Pinochet which overthrew Chilean constitutional president Salvador Allende. (AFP Doc. Ref. ARP1921256).

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Ground Breaking Legal Casework

Equipo Nizkor played a decisive and direct role in the [Pinochet case](#) as part of its long-term strategy against models of impunity, a strategy which was first discussed publicly at a seminar entitled the “The First Conference against Impunity in Latin America”, held at the offices of the European Parliament in Madrid on 15th and 16th February 1996.

In the course of the seminar, Equipo Nizkor and two organisations (well-established Argentinian human rights organisations, SERPAJ and the Association of Relatives of the Detained and Disappeared) studied the case histories of Spanish victims of the Argentinian dictatorship and agreed to commence litigation in respect of these crimes. Such litigation would rely on the application of international criminal law in domestic jurisdiction - ground-breaking legal casework.

Anticipating the presentation of this lawsuit by Equipo Nizkor and the Argentinian associations, the Progressive Union of Prosecutors (Unión Progresista de Fiscales) submitted an initial complaint on 28th March 1996 (which became known as the “Castresana complaint” after the name of the Prosecutor who signed and submitted it). That complaint was focussed on the crimes committed during the last Argentinian dictatorship. However, the documents submitted by Carlos Castresana were erroneous (consisting of a list which included errors in both, the names of the victims and the perpetrators). Equipo Nizkor intervened to [correct the mistakes](#) and ensure that the case was not closed with prejudice.

Shortly thereafter, on July 4th, 1996 a complaint was filed by another prosecutor in Valencia, Spain concerning the cases of Spanish victims of the Chilean dictatorship. This became known as the Chilean case (or the Chilean investigation) and following a review of respective competence, the case was transferred to the National Court in Madrid on July 8th, 1996, and from there to the Central Investigating Court N° 6, presided over by Judge García Castellón.

Fighting Impunity

In December 1996, again with the participation of Equipo Nizkor, an International Conference was held in Santiago, Chile entitled “[Impunity and its effects on Democratic Process](#)”. This is still the largest conference to date on impunity and the UN Rapporteur on Civil and Political rights, Mr. Louis Joinet, revised his final report the “Question of the impunity of perpetrators of human rights violations (civil and political)”, to reflect the discussions at the conference, certainly the greatest advance

until then in the United Nations system on the issue of impunity. Simultaneously, Equipo Nizkor, under its President Gregorio Dionis, formed an *ad hoc* working group with the objective of systematizing the development of international criminal law since Nuremberg so that it could be applied in ordinary jurisdictions.

Prior to this, there had been no legal or academic work addressing this issue and the consequence of these efforts was the systemisation of the Nuremberg legacy and international jurisprudence to date. From its outset, the working group benefited from the contribution of Richard Wilson (Director of the “International Human Rights Law Clinic” at Washington College of Law, American University); later on it was also assisted by contributions from Hastings College of Law, University of California, the law faculty of the University of Yale and other independent experts who had spent time with Equipo Nizkor at its Madrid offices.

Equipo Nizkor has carried out the only translation into Spanish of the jurisprudence of Nuremberg. The working group also achieved, for the first time ever, its systematization in English for use in domestic courts.

Developing a Legal Strategy

One of the greatest problems of developing a strategy to achieve a judgement in ordinary jurisdiction for crimes against humanity was that in Spain there is no concept of trial *in absentia*. This created a serious challenge: how to ensure that a person responsible for such serious crimes is arrested in a European jurisdiction which allows extradition to Madrid, without reliance on the support of any national government and notwithstanding State opposition, primarily in this case, that of Spain, Argentina and Chile.

For a year and a half the working group systematically studied the necessary law and processes to prepare a plan of action in the event that an official with the right profile could be identified in a European country. Part of this analysis included a review of the judicial co-operation agreements concerning arrest and extradition that then existed between the following countries: the USA with Europe, Argentina and Chile, and Spain with Italy, Great Britain, France and Germany.

The process involved in the European arrest warrant was specifically studied, as was the concept of “urgent arrest” for drug-trafficking cases imposed by the US State Department in its judicial co-operation agreement with Italy, a legal model later adopted by Spain and Great Britain. Various lawyers worked on this subject, including experts in procedural law and organized crime, as Gregorio Dionis was convinced that these types of tools could be used, rather than standard extradition agreements, which permitted political intervention by Foreign Ministries and Governments.

It was in this context that one should analyse and understand Equipo Nizkor’s strategy in the “Pinochet Case”. A detailed explanation of this history and context is given by Gregorio Dionis in an audio document available online in Spanish at <http://www.radionizkor.org/editorial/index.html#gdd> and produced by Radio Nizkor on 16 October 2008.

Pinochet in Europe

When the Pinochet case first arose in 1998, Equipo Nizkor had been working on this strategy with a network of colleagues in Chile including prestigious activists who were specialists in field-work. Among these activists there were those with a comprehensive knowledge of the records existing on the disappeared as well as the military intelligence and DINA operations during the worst years of the dictatorship. Equipo Nizkor first learned that Pinochet was in Europe from information it received from France, according to which, that country had denied Pinochet an entry visa, which he had requested for “medical treatment”. Subsequent investigation showed that Pinochet had entered the Netherlands and had been obliged to abandon this country at the request of the Dutch authorities. Equipo Nizkor then learned from other collaborating activists in London the confirmation of the identity of Pinochet who had registered at the London Clinic as Antonio Ugarte.

At the request of the lawyer Joan Garcés, who was representing the Salvador Allende Foundation, which had joined the so-called “Chilean case”, a meeting was held between Gregorio Dionis and Joan Garcés, during which a strategy was agreed to obtain the arrest of Augusto Pinochet in London and his subsequent extradition. Total confidentiality about this strategy was agreed to be paramount. At this point, Judge García Castellón who was in charge of the Chilean investigation in Spain since it was assigned to him in 1996, was in the process of requesting his own transfer to another judicial post.

In October 1997, General Fernando Torres Silva, one of the Pinochet government’s henchmen, former military prosecutor and Staff Judge Advocate (Auditor General del Ejército) to the Army, travelled to Madrid to hold an interview with Judge García Castellón. Shortly afterwards Judge García Castellón expressed that he no longer wanted to be a Judge in the National Court and asked to be assigned to a lower court.

The problem now facing Equipo Nizkor and the others working on the Pinochet case was how to ensure that a warrant could be issued speedily while Pinochet was still in a European jurisdiction.

The wealth of knowledge that Gregorio Dionis had of the crimes committed in the context of both the Argentinian and Chilean dictatorships became key to solving this urgent and potentially fatal problem. Gregorio selected, as the principal basis to assert the jurisdiction of Central Investigating Court N° 5, a case known as the 119, the facts of which occurred in Argentina. The crimes committed in that case had been adjudged “proven facts” by Chile and had been included in the Rettig Report (The Rettig Report, officially The National Commission for Truth and Reconciliation Report, is a report released in February 1991 by a commission designated by then President Patricio Aylwin regarding human rights abuses resulting in death or disappearance during the years of Pinochet’s military rule, from September 11, 1973 to March 11, 1990).

In brief, the case was one where the Government of Chile organized an international campaign against the Chilean group MIR (Movement of the Revolutionary Left) consisting of planting the identity documents of 119 Chilean nationals executed in Chile on 119 cadavers in Argentina. The MIR was then accused of responsibility for committing these executions as a result of their own internal conflicts. These facts were investigated by the Chilean justice system and completely proven. In Argentina the case was never investigated and, to this day, not one of the 119 executed in Argentina has been identified.

As these crimes were committed in Argentina, the team was able to introduce them as the basis for Central Investigating Court N° 5, which had been assigned the

original Argentinian case, to exercise its jurisdiction over the case. This also resolved the issue of Judge García Castellón's determination to not proceed with the Chilean investigation. Court N° 5 was presided over by Judge Baltasar Garzón. García Castellón surrendered his competence in the Chilean case to Central Investigating Court N° 5 and it was thus that the Chilean case came to be under the jurisdiction of Judge Baltasar Garzón, the judge responsible for the Argentinian cases.



Former Chile's President General Augusto Pinochet speaks to army officers at Military School of Santiago, 23 August 1990, for the 17th anniversary of his function as Commander of the armed forces. (AFP Doc. Ref. ARP1548920)

The Arrest of Pinochet

The four days leading up to Pinochet's detention on the 16th October 1998, were key to ensuring that the Central Investigating Court No. 5 (JCI No. 5) issued an order for the arrest of Augusto Pinochet Ugarte, and it was more than ever essential to avoid any information leaks endangering the strategy. It remained to be seen whether all the efforts of our team would result in the issuance of legal proceedings and if so, with what outcome.

At the recommendation of Equipo Nizkor, a request for the interrogation of General Pinochet was submitted to Court No. 5 on October 13th, and the court ordered the transmission of this request to Interpol London the following day. On October 15th, a submission to extend the criminal complaint in the Chilean case was filed with Court No. 5, requesting the court to order General Pinochet's pre-trial detention and his search and capture, as provided for under Spanish procedural law.

Gregorio Dionis directed the preparation of these submissions. This was the only criminal complaint to form the basis for the arrest order. This is because Joan Garcés at this time and for some time thereafter played no part in the Argentinian investigation and the other parties involved in those proceedings in Court N° 5 (a total of nine at that time) were not even aware of the strategy involving the Pinochet case. Notwithstanding that some of these lawyers were quoted in media reports as having taken part in the arrest of Pinochet, it was in fact only at the time of his arrest that they even knew it was happening.

On receipt of the request for interrogation on October 13th Judge Baltasar Garzón was not at all inclined to issue the arrest warrant and had given the team a deadline of 48 hours to produce sufficient evidence to substantiate its issue. Working under this difficult time restraint, the team managed to submit to Court N° 5 on Friday 16th substantial evidence of a case concerning one important victim of Pinochet's regime, that of the leader of the MIR (Movement of the Revolutionary Left), Miguel Enríquez. The Judge finally agreed to indict Pinochet and to issue the warrant for his arrest directly to the British police.

Ensuring the Detention of Pinochet

Once the warrant reached the United Kingdom, a second phase of urgent preparation was then initiated by the requirement of the British authorities to produce in less than 72 hours further evidence in English to consolidate the initial arrest warrant.

In order to carry out this task, two groups were set up as of Friday 16th. One group was located at the offices of Joan Garcés, where Antonia Macias, a qualified lawyer and the General Secretary of Equipo Nizkor, set up logistic support and co-ordination; and the other, supervised by Gregorio Dionis, was responsible for systematization and preparation of the documentary evidence. These teams also had to overcome the problem that all the supporting documentation had to be in both Spanish and English. If the documents were submitted only in Spanish, Pinochet would be left at liberty until the judicial services had completed the translation. To resolve this, a team of three translators led by Antonia Macias and working under the same 72 hours deadline, translated all the documentation so that when the arrest order was complemented by additional evidence, all necessary supporting documents could be immediately available in both languages. The team included a Chilean and Colombian translator, whose identities to this day remain confidential.

The co-ordination of the group supervised by Gregorio Dionis was crucial to be able to obtain urgently from Chile the evidence required, in duly authenticated form. In Chile, Equipo Nizkor's colleagues had purchased in old bookshops the following evidentiary material: a) The Rettig Report translated into English by a US university of which only a few copies had ever been sent to Chile, b) a book by Pinochet entitled "El Dia Decisivo" which had a particular interest: General Pinochet had written a dedication and had signed the galley proof (as was a common practice in the 19th century); as a result it was admissible as evidence in court and c) the English translation of the book which had been produced as a special edition by the Chilean Army, under the title "The Crucial Day". These documents, duly authenticated, arrived from Santiago de Chile via DHL within the deadline, at the home of Gregorio Dionis, further consolidating the case and the arrest order.

Thus on 18th October 1998, Judge Garzón had no alternative but to extend the criminal complaint again to include 94 victims of Pinochet. By the morning of Monday 19 October 1998, as requested by the British competent authorities, the evidence supporting the extension of the arrest order was in London and in English.

The Legacy of the Landmark Pinochet Case

It goes without saying that all the participants in Chile put their lives at risk to achieve this objective. And all those who participated directly in the arrest of Augusto Pinochet, in Chile, Spain and London lost their remunerated employment within 18 months following his arrest.

In addition to all this, Equipo Nizkor co-ordinated a strategy with a group of human rights defenders in Belgium, made up of Belgian citizens and Argentinian and Chilean refugees and a Latin American lawyer, to ensure that the Kingdom of Belgium would make an appearance in the London proceedings. Belgium did indeed enter in the case but desisted some months later as a result of the enormous pressure brought to bear on the government.

The outcome of the case is universally known. Equipo Nizkor has always maintained that the Pinochet case was a successful socialization of the subject of impunity but, in strictly legal terms, the outcome was a disappointment. In the end, the political decision to return Augusto Pinochet to Chile prevailed over justice.

Whatever the case, it is undoubtedly true that there is now a "before" and an "after" in the collective imagination with respect to the possibilities for application of international law for these serious crimes against human rights. It established that the use of a complex legal strategy can confront State action and impunity for crimes against humanity and war crimes.