

### The historical responsibility of the Chilean Supreme Court

It is paradoxical, and even surprising, that the extradition of Alberto Fujimori is encountering obstacles in Chile, one of the countries that is doing the most to combat impunity in the continent. The Chilean Supreme Court itself delivered decisions that left charges hanging over Augusto Pinochet until the end of his days, though he was never brought to trial. Alberto Fujimori is not simply a suspected car thief who is fighting extradition in any way he can. He is an individual who, during the ten years he was head of the executive branch of government, presided over, organized and often personally kept close track of actions that ended in the detention, torture, extrajudicial execution and forced disappearance of thousands of people. The report by the Peruvian Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación, CVR*) could not be clearer on this point.

The experience of Chile and other countries shows that it is very difficult, but not impossible, to trace the thread of criminal responsibility for State crimes back to their instigator: the President of the Republic. It is difficult because the latter tries not to leave any material trace of his orders. Usually there are no written documents authorizing the disappearance of hundreds or thousands of people, no witnesses to such orders being given and often not even any physical evidence that a crime has been committed. If those responsible are eventually found, they are usually the ones who carried out the abuses and not those higher up who devised the policy of physically eliminating real or supposed adversaries.

Investigations into disappearances can be brought to a standstill because of the absence of “traditional” forms of evidence: witnesses, physical evidence, etc. However, in a judgment that does it credit, the Inter-American Court of Human Rights ruled, in the case of *Velásquez Rodríguez vs. Honduras*, that, in order to prove that responsibility lies with the State when the latter refuses to admit that it was in any way involved, many, many more forms of evidence need to be taken into account, such as, for example, crime patterns, chain of command, the fact that, as Head of State and also Supreme Chief of the Armed Forces, the Head of State in question knew or ought to have known about any serious acts involving the violation of basic rights, and the failure to act with due diligence. According to the Inter-American Court, these factors, when taken separately, do not demonstrate State responsibility but, when taken together, constitute, as the CVR rightly states in relation to Alberto Fujimori, “reasonable evidence” that makes it possible to say that he is “criminally responsible” for the dozens of killings, disappearances and massacres carried out by the death squad known as *Grupo Colina*.

In terms of Latin American jurisprudence, the case of *Velásquez Rodríguez vs. Honduras* paved the way for justice to be done with regard to many disappearance cases within the continent. Both the Inter-American Commission on Human Rights and the Inter-American Court have subsequently issued other judgments and rulings which inexplicably Judge Orlando Álvarez has failed to take into consideration. His decision does not reflect the seriousness of the crimes of which Alberto Fujimori is accused or the fact that his actions affected tens of thousands of people. Hence the

comparison suggesting that Alberto Fujimori seems to have been treated as if he is simply a car thief (who, nevertheless, naturally has the right to be treated according to law). However, the actions of a former Head of State need to be judged from the perspective of international jurisprudence on the subject and the progress that has been made in combatting the impunity surrounding the executive branch of government within the Americas. Such jurisprudence was cited by the London court which eventually ordered Augusto Pinochet to be extradited to Spain. As everyone will recall, that order was rescinded by the then Home Secretary on the basis of medical reports.

We hope that the Supreme Court is aware of the responsibility it has both to the hundreds of thousands of victims within the continent who have suffered repressive policies organized at the highest level of the State and beyond, to the rest of humanity, and that it will contribute a further page to the rule of law in the Americas, above which nobody, and least of all a Head of State, should remain.

But even supposing, though not conceding, that the extradition request is flawed in some way, the evidence built up against Alberto Fujimori is such that the Chilean courts are obliged to open proceedings against the former Peruvian President for the responsibility he holds with regard to these crimes against humanity, crimes that are an affront to us all.

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