

£CHILE

@Supreme Court continues to block investigations into past human rights violations: the Chanfreau case

On 30 October 1992, the Third Chamber of the Supreme Court ruled that the judicial investigations into the "disappearance" of Alfonso Chanfreau Oyarce should be transferred to the Second Military Court of Santiago. The Supreme Court's decision almost certainly presages the end of these investigations, since the military courts have closed, almost without exception, every single case of "disappearance" or extrajudicial execution that has come before them on the basis of the 1978 Amnesty Law.

In making its decision, the Supreme Court said that the alleged crime was committed during a "state of internal war" involving members of the military in active service. Human rights organizations and political leaders expressed their dismay and outrage at the Supreme Court's decision. Lawyers representing the main human rights organizations issued a public statement deploring the court's ruling which, they said, contained unacceptable errors and juridical and historical inconsistencies.

The lawyers reserved their greatest criticism for the Supreme Court's argument that a war had been fought between 11 September 1973 and 11 September 1978, that crimes committed by members of the military had to be seen in that context and that they were therefore under military jurisdiction. This, they said, was wholly inaccurate with grave moral and legal implications and contradicted previous rulings made by the Supreme Court. In 1990, for example, the court upheld the application of the 1978 amnesty law in a case involving 70 "disappearances". It argued that humanitarian law - which would prevent an amnesty for crimes against humanity from being applied - did not apply since there had not been a state of war in the country during the period covered by the amnesty law.

The lawyers maintained that from this ruling, it could be concluded that torturing and kidnapping could be seen as being acts of military service. In addition, they said, the Supreme Court confirmed that the secret detention centres run by the *Dirección de Inteligencia Nacional, DINA* (Directorate of National Intelligence) were military centres whereas previously they had denied the existence of such places, rejecting thousands of *recursos de amparo* (similar to writs of habeas corpus) presented on behalf of detainees, many of whom subsequently "disappeared".

Of the Third Chamber's six judges, four voted in favour of transferring the case to military jurisdiction and two voted against. Three of the judges were appointed during the dictatorship, two were named by the present government and the third, Fernando Torres, is the Army's General Counsel (*Auditor General del Ejército*). The activities of Fernando

Torres who was ad-hoc military prosecutor (*fiscal militar ad hoc*) during the 1980s, gave rise to a number of complaints and petitions against him for numerous irregularities in proceedings for which he was responsible against prisoners charged with politically motivated offences.

Alfonso Chanfreau is one of about 1000 people who are known to have "disappeared" after their abduction by members of the security forces. The 24-year-old philosophy student and leader of the *Movimiento de Izquierda Revolucionario, MIR* (Movement of the Revolutionary Left) was taken from his home on 30 July 1974 by members of the former security police, the DINA. His wife, Erika Hennings, was arrested the following day and taken to a secret detention centre, *Londres 38*. According to her testimony, she was taken into a room, where blindfolded, she was obliged to listen to her husband being tortured. The couple saw each other a few times in the following days. On 13 August 1974, Alfonso Chanfreau was among a group of people taken out of the detention centre, and he remains "disappeared".

Civilian judge Gloria Olivares, began her investigations into the "disappearance" of Alfonso Chanfreau in 1990. Her wide-ranging investigations were applauded by human rights campaigners and gave hope to hundreds of families waiting for justice. She interviewed a number of former prisoners who gave evidence about the involvement of members of the DINA in the abduction, torture and "disappearance" of detainees, including Alfonso Chanfreau. She also questioned a number of senior members of the DINA, the agency responsible for many of the "disappearances" in the 1970s. Among the DINA agents she interrogated were Colonel Miguel Krasnoff Marchenko, and Barclay Zapata Reyes, alias "El Troglo", who are serving army officers. She resolutely pursued her investigations even when both of them refused on more than one occasion to appear in court to testify.

Her investigations led to the tracing of Osvaldo Romo, a former DINA agent, who had been living in Brazil since the mid-1970s. Osvaldo Romo was expelled from Brazil in mid-November and returned to Chile where members of *investigaciones* (criminal investigations police) were waiting for him with several arrest warrants; one of them relating to the "disappearance" of Alfonso Chanfreau. Although the investigations into this case have been passed to military jurisdiction, there are other cases in the civilian courts where he could still testify.

There is little doubt that the evidence these former DINA agents could bring to the investigations could clarify the fate and whereabouts of many of the "disappeared". Amnesty International fears that if the military courts persist in closing investigations by invoking the 1978 amnesty law, this vital evidence will remain concealed and relatives will continue to be deprived of their rights to truth, justice and to recovering the remains of their loved ones.

Shortly after the Supreme Court's decision, Alfonso Chanfreau's widow, Erika Hennings, met President Patricio Aylwin. After their meeting, she said that President Aylwin had expressed his concern about the transfer of this case, and others, to the military courts. She said,

"It was quite a hard blow, but I still want to carry on fighting for justice in the case of my husband and for all the other cases of human rights violations".¹

¹ *"Fue un golpe bastante duro, pero sigo con ganas de seguir luchando por la justicia en el caso de mi marido y en todos los casos de violaciones a los derechos humanos".*

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**CHILE
SUPREME COURT CONTINUES TO BLOCK INVESTIGATIONS INTO PAST
HUMAN RIGHTS VIOLATIONS: THE CHANFREAU CASE**

RECOMMENDED ACTIONS

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