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President Kirchner Fights Impunity

by LADB Staff

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Spanish Judge Baltasar Garzon on July 8 reissued arrest warrants for 45 Argentine former military officers and one civilian on charges of torture, genocide, and other crimes against humanity. Extradition is a distinct possibility since Argentine President Nestor Kirchner annulled a decree forbidding extradition of former military officers to stand trial abroad for crimes committed in Argentina. The charges brought in Spain relate to alleged crimes committed against Spanish nationals in Argentina during the 1976-1983 military dictatorship.

Garzon, who has said he wants to try dozens of Argentine suspects, has acted under a Spanish law that says genocide can be prosecuted in Spain even if was committed in another country. Judge Garzon also requested that liens be placed on the property of the accused totalling almost US\$3 billion. That was the amount set as reparations for the victims of military rule in Argentina.

The request from Garzon was the latest chapter in efforts to hold the Argentine military accountable for abuses during the "dirty war." More than 9,000 people are officially listed as having disappeared during the military's crackdown on leftist opponents, but human rights groups put the figure at nearly 30,000. Judge Garzon already has Argentines Ricardo Miguel Cavallo and Adolfo Scilingo in custody in Spain. His arrest warrants came a week after he indicted Cavallo, who was extradited from Mexico to Spain to face charges of genocide and terrorism (see SourceMex, 2003-06-18). No date has been set for his trial, but it is expected to take place in 2004.

Argentine Federal Judge Rodolfo Canicoba Corral issued the order on July 24 for "preventative detention for extradition purposes" for the 46 Argentines indicted by Garzon. The Spanish judge now has 30 days to send a formal extradition request, in accordance with international law.

Those now awaiting the decision on whether they will be extradited to Spain include Alfredo Astiz (see NotiSur, 2001-07-13), known as the "blond angel of death," Antonio Bussi, the mayor-elect of the northern city of Tucuman (see NotiSur, 1998-03-13), and civilian attorney Gonzalo Torres de Tolosa.

Several of those named by Garzon are currently under house arrest on charges involving the illegal adoption of hundreds of children born to jailed dissidents during military rule. Those under house arrest include former dictators Jorge Rafael Videla Redondo (see NotiSur, 1998-06-12) and Emilio Eduardo Massera, former Gen. Carlos Suarez Mason, and navy officer Jorge "Tigre" Acosta.

"We are satisfied with the request for capture, which will prevent their leaving the country. We think it would be great if Argentina became a prison for them," said Juan de Wandelaer, impunity representative for the human rights group Servicio de Paz y Justicia (Serpaj), headed by Nobel laureate Adolfo Perez Esquivel.

Just hours after the list was made public, one of the men on the list, Juan Antonio Azic, attempted suicide by shooting himself in the mouth and was in serious condition at the Navy Hospital. Azic had been identified and accused of human rights crimes by Spanish survivors of the Escuela Superior de Mecanica Armada (ESMA), used as a torture center during the dictatorship.

Kirchner reverses decree to bar extradition

This was the fourth arrest request Garzon had sent to Buenos Aires since 1999. What made this time different and what could allow the extradition request to go forward was the order signed by President Kirchner on July 25. It reversed Decree 1581 issued by former President Fernando de la Rúa (1999-2001), which barred extradition of Argentine military officers to other countries to be tried for human rights crimes committed in Argentina.

Now, instead of being rejected outright, extradition requests from other countries presented to the Foreign Ministry will be passed on to the appropriate judicial bodies to be considered on a case-by-case basis. When Kirchner began his term May 25, he promised to end impunity and to purge the military of those responsible for abuses. "We have to find a way to reconcile this sad part of our history," he told senior officers. "We don't have another 20 years in which to do it."

Many hope Kirchner's move will lead to reversing all the laws that have protected the former military. Estela Carlotto, president of the human rights group Abuelas de Plaza de Mayo, said Kirchner's decision is an important step toward justice, "but we must see what actions are taken."

"It looks like Argentina is finally confronting its past- -it's taken many years," said Jose Miguel Vivanco, executive director of Human Rights Watch/Americas (HRW). "Whatever happens with the extraditions, over the next few years human rights will be at the top of the agenda in Argentina."

Commenting on the repeal of Decree 1581, Justice Minister Gustavo Beliz said it ends legislation that "conferred special treatment" on military officers and implied "interference by the executive branch in the judiciary's activities." But Canicoba Corral pointed out that, according to the law on extraditions, "In the end it is the executive branch that decides, because the law gives the government the authority to determine whether it will hand over the military officers."

The arrest order by Canicoba could have repercussions in France, Germany, Italy and Sweden, where the courts are seeking Argentine military officers who committed human rights violations against their citizens during the dictatorship. France and Sweden have repeatedly sought Astiz for the assassinations of French nuns Alice Domon and Leonie Duquet, and Swedish citizen Dagmar Hagelin (see NotiSur, 1998-01-16). Germany has requested extradition of retired Gens. Suarez Mason and Juan Bautista Sasiain, and retired Col. Pedro Duran Saenz, for the kidnap and murder of German sociologist Elisabeth Kassemann. Italy is seeking Suarez Mason and retired Gen. Santiago Riveros for the assassination of six Italian citizens and the kidnapping of the grandson of Estela Carlotto.

Trials could take place in Argentine

Deciding which extradition requests to honor, and in which order, is likely to be a complicated and time-consuming process. Judge Canicoba said it would take "at least several months" to sort out the various requests, and he suggested that extraditions might not occur if Argentina is able to try the accused in local courts.

Government sources said they would rather that these crimes be tried by Argentine courts, which would require Congress or the Corte Suprema de Justicia (CSJ) to declare unconstitutional the *punto final* and *obediencia debida* laws, enacted by the Raul Alfonsin government (1983-1989). The laws set a time limit on legal action and permitted 1,300 junior officers to claim they were just following orders.

The junta's leaders were pardoned by former President Carlos Saul Menem (1989-1999) in 1990, five years into life sentences for human rights abuses. In 2000, Congress repealed the laws, meaning they could not be applied after that date, but they were not annulled, so prosecutors could not initiate legal proceedings after those who had benefitted from the amnesty.

Analysts are predicting increased attempts to erase the *punto final* and *obediencia debida* laws. Previous challenges drew strong rebukes from senior military officers and sharply divided the country's political establishment. "There is a hard-core group, mainly associated with current and former members of the military, that remains militantly opposed to going after those accused of abuses," said political consultant Felipe Noguera. "On the other side is a group equally adamant to see justice done."

Lower courts have found both amnesty laws to be unconstitutional (see NotiSur, 2001-03-30), but those verdicts were appealed to the CSJ, which has not ruled on the appeals. The CSJ is in turmoil because of Kirchner's attempt to depoliticize the judiciary (see NotiSur, 2003-07-04).

On July 30, Kirchner said those accused of crimes against humanity during the dictatorship should be tried in Argentina. "The repressors ought to be judged in Argentina. If that was not done before, it was because norms were created that favored impunity," said the president. "The laws were approved under the threat of a coup, and if Congress declared the laws null, it would be good."

Congress has called a special session for Aug. 12 to discuss the two laws, and wiping them off the books would allow prosecutors to reopen cases against the accused repressors. But Kirchner has also made it clear that time is running out for the CSJ and Congress to act. He said on July 31, "If the CSJ delays its ruling and if Congress also fails to find a solution, I would be inclined to grant the extraditions requested by Judge Garzon for those ex-repressors."

On Aug. 4, a spokesperson for the CSJ said that the court was beginning to examine the constitutionality of the laws. However, the crisis in the CSJ, and divisions among the judges, make a decision in the short term unlikely. On Aug. 5, the Partido Justicialista-peronista (PJ) bloc in Congress said it would spearhead the effort to have the laws annulled.

Recent polls indicate about 64% of Argentines approve of the president's decision to overturn the extradition decree, and they also show that about 65% of respondents would support overturning the *obediencia debida* and *punto final* laws.

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