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IACHR Rules against Uruguay in Operación Cóndor Case

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The Inter-American Court of Human Rights (IACHR), an Organization of American States (OAS) entity, ordered Uruguay to annul a law guaranteeing impunity to military and police who were responsible for kidnappings, torture, assassinations, and disappearances during the 1973-1985 dictatorship. The March 24 IACHR ruling also obliges the Uruguayan government to put up commemorative plaques and hold ceremonies honoring the victims of the regime at the sites where they were kidnapped or murdered. The ruling, which refers to only one precedent, the IACHR's 2010 ruling condemning Brazil for maintaining an amnesty law that violates international law, is not binding; rather, it is an ethical sanction that Uruguay can meet only by complying fully with the court's findings.

The regional press gave ample coverage to the ruling and, in general, warned that, although it is addressed specifically to Uruguay, it is a powerful warning to all countries where human rights violators enjoy certain benefits that are inadmissible ethically, morally, and under international law.

The IACHR agreed to hear the case against Uruguay after receiving a complaint from Argentine poet Juan Gelman, who in 2000 found his granddaughter María Macarena, whose pregnant mother had been kidnapped in Montevideo in 1976. Gelman is still searching for the remains of his daughter-in-law María Claudia García Iruretagoyena de Gelman. María Macarena and María Claudia are the daughter and wife of Marcelo Gelman, kidnapped and killed in Buenos Aires in the first phase of one of the most notorious campaigns of Operación Cóndor, the coordinated repression against dissidents by Southern Cone dictatorships in the 1970s (NotiSur, Feb. 16, 1993) and (Sept. 3, 1993).

Impunity law violates international treaties

The IACHR found that Uruguay's Ley de Caducidad de la Pretensión Punitiva del Estado—known as the impunity law—has no legal effect because it is incompatible with the American Convention on Human Rights and the Inter-American Convention on the Forced Disappearance of Persons in that it "impedes investigation and eventual punishment of those responsible for human rights violations."

In 1986, the Uruguayan Congress, under strong pressure from the military, passed the law, which prohibits trying military and police but not civilians who worked for the dictatorship. Thus, in drafting the law, the military high command at the time "forgot" to give civilians the same protection that they received, and they also "forgot" to include crimes committed beyond Uruguay's borders, ensuring impunity only for those acts committed in the country. The law also established that the executive would determine what the law covered and what it did not.

The Suprema Corte de Justicia (SCJ) has already ruled the law unconstitutional (NotiSur, March 4, 2011) because it violates the principle of equality among persons and international human rights conventions signed by Uruguay, and allows one branch of government (executive) to interfere with another (judicial). For the same reasons, the IACHR ruled against the country.
But the IACHR went further. Its ruling is a wake-up call to the judiciary of the entire inter-American community. It tells judges that they must apply international law in all their actions and resolutions and disregard national laws that violate international human rights treaties and conventions.

"When a state is party to an international treaty such as the American Convention," says the court, "all its bodies, including its judges, are subject to it, obliging them to ensure that the effects of the Convention's provisions are not reduced by the application of laws contrary to its objective and aim. Therefore, judges and bodies linked to the administration of justice at all levels are obliged to exercise control of national laws and the American Convention."

To achieve that objective, the IACHR says that judges "must consider not only the treaty but also its interpretation by the Inter-American Court, final interpreter of the American Convention."

The cited paragraph means that Uruguayan judges, and above all the appeals courts, will have to change the orientation of various resolutions. For example, judges who hear cases similar to that of the Gelmans have understood that, in cases of disappearances, the charge to be applied is "particularly aggravated homicide," even when the victim's remains have not been found. Consequently, they understand that the statute of limitations for such crimes is 26 years and 8 months after the commission (the dictatorship ended in 1985, thus the statute of limitations ends in October of this year).

Until now, no court has expressly ruled that human rights violations investigated in the country are crimes against humanity and, therefore, imprescriptible. If the courts comply with the IACHR ruling, they will have to make profound changes to their opinions.

One aspect of the ruling is very important for relatives of victims and for human rights organizations working to have the law rescinded. It expressly says that protecting human rights "does not pertain to the realm of what is subject to the decision of the majorities in democratic instances" (electoral majorities).

The Uruguayan Congress is currently considering annulling the law and replacing it with a new one. Because impunity was approved in plebiscites in 1989 and 2009, defenders of the injustice say that it has a "special character" and can be annulled only through another plebiscite.

**Legislation to annul law under debate**

Lawyer Óscar Goldaracena—one of the promoters of the 2009 referendum—constituentalist José Korzeniak, and other jurists say that this is a "false argument." All agree that there are two ways to pass a law (through legislative majorities and by popular vote), and that laws can be annulled in the same two ways.

Agreeing with that opinion, the governing Frente Amplio (FA) decided on March 18, six days before the IACHR verdict was announced, to require all its legislators to vote in favor of the measure to annul the impunity law. It made that decision because three FA senators had joined those who pointed to the impunity law's "special character," jeopardizing passage of the annulment law.

As stated, the Gelman case is a compendium of atrocities committed by Latin American dictatorships, an emblematic example of Operación Cóndor. It is worth remembering. Kidnapping, torture, murder, disappearance, and stealing a baby were some of the crimes perpetrated on the victims—the son, daughter-in-law, and granddaughter of the famous poet. Marcel Gelman, then 20
years old, was killed after being kidnapped in Argentina and horribly tortured in the prison camp Automotores Orletti, the Argentine center of Operación Cóndor.

María Claudia, then 19 years old and seven months pregnant, was kidnapped in Buenos Aires and taken to Uruguay for unknown reasons. In Montevideo, in late 1976, she gave birth to a daughter in a military unit and never saw the baby again. The baby was given to an Uruguayan police officer who named her María Macarena and raised her until she was 23 years old. In 2000, when her real identity was restored, María Macarena made the moving observation that, when she learned about her birth mother, she was a young woman four years older than her mother had been when the repressors carried out their brutality. The Gelman family's search had begun the year before.

In 1975, just before the coup in Argentina, the poet had to go into exile to escape a death threat by the Alianza Anticomunista Argentina, an ultraright organization known as Triple A and precursor of the repressive regime that the military would soon establish in the country.

For the few remaining members of the Gelman family, especially Juan, the most important living Spanish-language poet, in March justice finally began to be achieved, after 35 years of hope and suffering. Along with the March 18 decision by the FA to end the aberrant law and the March 24 IACHR ruling that obliged Uruguay to correct its actions, there was another healing decision on March 31. The Argentine judiciary sentenced the four top people in charge of Automotores Orletti to between 20 years and life in prison for the kidnapping and killing of Marcelo and other Operación Cóndor victims.

Meanwhile, in Uruguay, the forensic-anthropology team of the state Universidad de la República is excavating at an Army base in search of María Claudia's remains.

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