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Andrés Gaudàn

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Uruguay's Supreme Court Overturns Law Allowing Prosecution of Human Rights Violators

by Andrés Gaudín
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In just eight days, between Feb. 14 and 22, Uruguay's Suprema Corte de Justicia (SCJ) steamrolled over human rights, destroying what little had been accomplished in 28 years of democracy to judge crimes against humanity committed by state terrorism during the worst civilian-military dictatorship (1973-1985) in the country's history.

First, the SCJ demoted without cause Judge Mariana Mota, who specialized in human rights, transferring her from criminal court to civil court. It then ruled unconstitutional Ley 18.831, according to which no statute of limitations could be applied to crimes committed during the dictatorship.

Mota was investigating and in many cases was ready to hand down sentences in cases involving more than 50 kidnappers, torturers, persons responsible for forced disappearances, and those who took babies born to prisoners from their mother’s womb and then killed the mothers.

In a country in which only 11 military and two civilians have been sentenced, Mota was the one who had the courage to sentence former dictator Juan María Bordaberry and his foreign minister Juan Carlos Blanco to 45 years in prison (NotiSur, March 19. 2010).

Ley 18.831 corrected the legal aberrations of the amnesty law—Ley de Caducidad de la Pretensión Punitiva del Estado (law on the expiry of the punitive claims of the state)—which was severely challenged by the Inter-American Court of Human Rights (IACHR) and other ecumenical bodies (NotiSur, April 15. 2011).

Judge Jorge Ruibal Pino, president of the SCJ since Feb. 1, said that Mota's demotion was motivated by "technical reasons," an explanation repudiated by a group of 23 political and social human rights organizations. His colleague Justice Jorge Chediak committed the crime/sin of lying by saying that Mota was demoted because she was the subject of several investigations. Those allegations were disproved within hours.

Supreme Court shuns IACHR

In declaring Ley 18.831 unconstitutional, the SCJ ignored an IACHR decision, the unanimous opinion of multinational nongovernmental human rights organizations, and international conventions signed by Uruguay. Voting with the majority were Judges Ruibal Pino, Chediak, Julio César Chalar, and Jorge Larrieux.

Both decisions were praised by conservative political parties and media as well as the three rightist post-dictatorship former presidents—Julio Maria Sanguinetti (1985-1990, 1995-2000), Luis Alberto Lacalle (1990-1995), and Jorge Batlle (2000-2005). They were also praised by the social clubs of retired military and police, those who murdered, tortured, and disappeared persons in those bloody years.
The SCJ knew—as noted expressly by Judge Ricardo Pérez Manrique, the only SCJ member who voted against the measures—that it would expose the Uruguayan state to new IACHR sanctions and harsh challenges from the most representative international human rights organizations.

"The SCJ is determined to turn its back on everything that comes from society, dealing with the simple question of why it makes decisions that are at odds with universal jurisprudence. With the air of one offended, and with the support of a certain political and media entourage, it rejects the citizen protest that asks for explanations and does so as if it holds some type of absolute power. That was long part of the country's colonial history, not that of the country that chose to put sovereignty in the good hands of the people," wrote analyst Walter Pernas in the magazine Brecha. That was his way of expressing his indignation after the SCJ called on the police to repress a few thousand demonstrators who had gathered near its headquarters to show their repudiation of Judge Mota's demotion.

Some might think that, of all the structures that might expose it to shame, the SCJ would be interested only in what the IACHR and other international organizations such as the UN would say. But they would be mistaken. The judges even ignored the IACHR ruling of Feb. 24, 2010, that condemned the Uruguayan state for "obstruction of justice."

The IACHR referred at the time to the legislation that erected a wall to block investigation of crimes against humanity. The condemnation was adopted within the context of the Gelman case, emblematic of Operación Cóndor, the coordinated repression by South American dictatorships in the 1970s. Argentine poet Juan Gelman, who was looking for his granddaughter, brought the complaint. She had been born in prison and was taken by authorities, who changed her identity (NotiSur, July 1, 2005).

The poet's son Marcelo Gelman and his wife María Claudia García Iruretegoyena were kidnapped in Buenos Aires in 1976. Marcelo was killed soon after that, and María Claudia, who was pregnant, was taken to Uruguay where she gave birth to her daughter María Macarena, the granddaughter the poet was searching for. María Claudia's body has never been found. The child, with the new identity, was given to the family of a police officer.

Among other things, the IACHR decision said the Uruguayan state could not obstruct investigations of serious human rights violations, preventing those responsible from being found, detained, and tried in a "reasonable period of time." It added that crimes of state terrorism must be classified as crimes against humanity (imprescriptible and not subject to amnesty) and that, if victims' bodies were not found, this would be considered a "continuous crime" that must be classified as "forced disappearance, not homicide."

Finally, it said that international conventions stipulate that "those who were beneficiaries of such laws cannot invoke the prohibition of retroactivity of the harshest criminal law nor res judicata. The subjection of the Argentine state to the Inter-American jurisdiction prevents the principle of 'non-retroactivity' of the criminal law from being invoked to violate the obligations undertaken in regard to the prosecution of gross violations of human rights."

The IACHR considered the impunity law a covert amnesty that guarantees impunity to those responsible for crimes committed within the context of state terrorism. It said so in February 2010 and it repeated that now. "Given its express incompatibility with the American Convention, the provisions of the Expiry that impede the investigation and punishment of serious violations of
human rights have no legal effect and, therefore, cannot continue to obstruct the investigation of the facts of this case and the identification and punishment of those responsible, nor can they have the same or similar impact on other cases of serious violations of human rights enshrined in the American Convention that may have occurred in Uruguay," read the IACHR ruling.

It is here where the IACHR makes a core observation: "The fact that the Expiry Law of the State has been approved in a democratic regime and yet ratified or supported by the public, on two occasions, does not automatically or by itself grant legitimacy under International Law."

The IACHR was unequivocal, as well, in pointing out that "democratic legitimacy of specific facts in a society is limited by the norms of protection of human rights recognized in international treaties, such as the American Convention, in such a form that the existence of one true democratic regime is determined by both its formal and substantial characteristics, and therefore, particularly in cases of serious violations of nonrevocable norms of international law, the protection of human rights constitutes an impassable limit to the rule of the majority, that is, to the forum of the 'possible to be decided' by the majorities in the democratic instance...."

In addition, Uruguay has two constitutionally recognized ways to pass a law—through a legislative initiative approved by Congress or directly, through a referendum or plebiscite. Both have equal weight.

**Other human rights organizations weigh in**

The Uruguayan SCJ was criticized not only by the IACHR. On Feb. 24, the UN High Commissioner for Human Rights Navi Pillay addressed the branches of government to express her "surprise and concern" by the SCJ ruling. "These actions can reset the shadow of impunity in a country that has begun to reconcile with truth and justice," she said.

Three days later, the human rights organization Amnesty International (AI) was very harsh, saying, "The Uruguayan SCJ protects impunity... and turns its back on the victims of serious violations of human rights committed before March 1985 [the end of the dictatorship]."

Previously, on Feb. 18, the Washington Office on Latin America (WOLA) and the Center for Justice and International Law (CEJIL) had expressed their deep concern for Judge Mota's transfer, and they offered to represent her in international tribunals if she decides to demand reinstatement to her previous position in the criminal system.

When Pillay said that the country "recently began to reconcile itself with truth and justice," she was referring to all the obstacles that the rightest political parties and the judiciary had created to prevent the dictators from being tried. In all cases, however, in one way or another, human rights defenders had been chipping away at that wall. Now, they will have to do so again, and everyone believes that the way to do that is once again though the legislature. How? It will be a matter of studying it.

This time, they will have an advantage. Society now knows that what the SCJ is doing—on its own or under pressure from de facto powers—is to tell citizens that one can kill for political reasons, one can kidnap, torture, and disappear persons for political motives.

Sen. Eduardo Lorier says, "We lawmakers who want a solution must go against this inhuman position, since Congress has the key to prevent closing investigations and to show that at least a part of the state is trying to fulfill its international human rights obligations."