

WHEN THE STATE KILLS...

The death penalty v. human rights

Chile

Status: Retentionist

Executions 1985 - mid-88: 2; murder

Other factors: Unfair trials; no right of appeal against sentences imposed by war councils

Method of execution: Shooting by firing-squad

In the 1980s the issue of the death penalty has received considerable attention in Chile, with the first death sentences passed by the courts since 1970 and the carrying out of four executions.

The death penalty has been provided in law since 1875 when the Penal Code was drawn up, and in the period to 1970 approximately 60 people were executed. The Popular Unity Government which came to power that year reduced the number of crimes punishable by death and the death penalty ceased to be mandatory. Since the military takeover in 1973 successive legislation has increased the number of offences punishable by death, and this penalty has once again been made mandatory for some offences during wartime.

Many people were summarily executed during the first few months after General Augusto Pinochet came to power, but no death sentences were passed by the ordinary courts between 1970 and 1980. Since then four former members of the security forces have been executed for common crimes, two in 1982 and two in January 1985. The former were executed for murder and the latter in a case involving a series of murders and rapes.

Between 1984 and mid-1988, death sentences were recommended by the prosecutor in the cases of 15 political prisoners mostly accused of participating in the killing of police or military authorities between 1980 and 1983. Of these, three political prisoners were subsequently sentenced to life imprisonment. Four political prisoners were sentenced to death. After a prolonged legal battle by defence lawyers the death sentence imposed on one of the four sentenced political prisoners, Carlos García, was commuted to life imprisonment in

November 1987. The Military Appeals Court failed to reach the required unanimous verdict (see below). The verdict was significant as it was the first case of a political prisoner facing a death sentence to reach the final stages of the judicial process. In the other three cases, the verdict of the Military Appeals Court was still pending at the time of going to press.

Several other political prisoners are also currently facing charges which could result in the imposition of death sentences. These include a group charged under the 1984 Anti-terrorist Law with involvement in an assassination attempt on General Pinochet in 1986.

The death penalty is provided for a number of offences contained in the Penal Code, the Code of Military Justice, the Anti-terrorist Law, the Arms Control Law and the State Security Law. Under the Penal Code the offences for which it can be imposed include treason, parricide and certain crimes resulting in the death, serious injury or rape of the victim, such as the abduction of minors and robbery with violence. Under the Code of Military Justice treason, espionage, and sedition resulting in death are among the capital offences listed. Under the 1984 Anti-terrorist Law certain crimes resulting in death or, in the case of kidnappings, serious injury may be punishable by death. The State Security Law provides for the death penalty for homicide and certain other crimes intended to subvert public order or intimidate the population. A range of crimes committed during wartime under the Code of Military Justice, the Arms Control Law and the State Security Law may be punishable by death.

In most cases the death penalty is optional, and if a death sentence is imposed the appeal court's verdict must be unanimous for it to be confirmed. However, when a judge of the Military Appeals Court voted in November 1987 against upholding the death sentence imposed on Carlos García "because a judge cannot order that the life of an individual be taken away", the prosecution, acting on behalf of the government, filed a complaint against him to the Supreme Court. The prosecution argued, unsuccessfully, that the judge's opposition to the death penalty had prevented an exemplary sentence from being upheld.

The death penalty is mandatory only under Article 5c of the State Security Law, which states

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that in wartime the penalties applicable to certain crimes "will be upgraded by one step and if the penalty is death, it must be applied".

The death penalty may not be imposed on individuals who acted in legitimate self-defence, through uncontrollable fear or while not in control of their mental faculties. Children aged under 16 are exempt, as are those aged under 18 if they acted "without judgment". A pregnant woman may be sentenced to death; however, both formal notification of the sentence and execution are delayed until 40 days after she has given birth.

Death sentences can be passed by civilian courts, military judges or war councils, depending on the legislation under which the accused is charged and whether it is in wartime. All except those sentenced to death by a war council have the right of appeal, either to an ordinary appeal court or to the Military Appeals Court. If the death sentence is confirmed, the defendant can ask the Supreme Court to annul it through various petitions of review, procedural complaints or cassation. There is no right of appeal to a higher court against death sentences imposed by war councils, which are subject only to review by a military commander.

In most cases prisoners can petition the President for clemency. General Pinochet has rejected all such petitions which have come before him during the 1980s. The Constitution stipulates that those sentenced to death for terrorist offences have no right to clemency or pardon, but it is unclear whether the President may still exercise his discretionary power to commute sentences or grant pardon. At the time of going to press no death sentence passed under the Anti-terrorist Law had reached the final stage of the judicial proceedings.

In nearly every capital case since 1982 there have been allegations of trial irregularities. The trials of political prisoners in particular often fall short of international standards for a fair trial. All political prisoners facing possible death sentences said they were tortured while held by the security forces. In addition, their defence lawyers have alleged that confessions extracted under torture have been used as evidence in trials, that their access to trial documents has been restricted or delayed, that there have been incomplete investigations, and

that prisoners have been convicted on the basis of supposition rather than proof. Such prisoners have been tried by military courts whose impartiality has frequently been called into question. There are further procedural limitations on defence rights in trials under the Anti-terrorist Law.

Execution is by firing-squad. A doctor is present to certify death and, if the first round of shots fails to kill the victim, the doctor "will indicate to the officer in charge of the firing-squad that it should shoot again". At a meeting in January 1987, however, doctors from the Chilean Medical College agreed that "the participation [of doctors] in executions is contrary to medical ethics".

► On 19 August 1988, the Military Appeals Court commuted to life imprisonment the death sentence against Jorge Palma Donoso, Carlos Araneda Miranda and Hugo Marchant Moya (convicted of the assassination of the regional governor of Santiago) after it failed to reach a unanimous agreement. The Court's president, Judge Enrique Paillas, voted against upholding the death sentences. The prosecution subsequently submitted a complaint about the court's ruling and a petition for cassation to the Supreme Court, arguing that it did not fulfil legal requirements. The petition also criticized the dissident vote of Judge Paillas. The Supreme Court rejected the complaint and the petition for cassation.

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