

Appendix 7.3
Torture Cases in the Santiago Appeals, the Constitutional and Chilean Supreme Courts
listed by issue area and court

Cases that cite the Convention Against Torture:

Key:

Jurisdictional Issues (Military vs. Ordinary)

Amnesty Laws (applicability and procedural requirements to grant amnesty) & Statute of Limitations for the prosecution of kidnapping and disappearance cases¹

Applicability of the Laws of Armed Conflict

Torture cases unrelated to military dictatorship

A. Corte Suprema

1. 4/5/2004; Rol 1179-2004 – Arrest and prison sentence due to outstanding debts
 - i. Cites the InterAmerican Convention and notes that it establishes nobody should be imprisoned b/c of failure to pay back debts
 - ii. Ct cites the CAT's definition of torture; Ct also mentions articles 5°, 7° y 10° of the American Convention to Prevent and Punish Torture. (here, it is unclear why CAT is relevant to the case)
2. 11/15/2004; Rol 5185-2004 – Arrest and prison sentence due to outstanding debts
 - i. Same as above (CAT's definition of torture is also cited).
 - ii. Note that in this case, and in the case above, it is not obvious why the Court is citing the **CAT**, other than the Court may have considered a prison term for outstanding debts as tantamount to torture.
3. 04/14/2005; Rol 3-2005; *ruling for victim*
 - i. Simple homicide case
 - ii. Ct considers and rejects arguments made by defendants that multiple international human rights instruments had been violated, including articles 1 and 2 of **CAT**.
4. 04/06/2004; Rol 1179-2004
 - i. The American Convention overrules a national law that allows prison sentences for outstanding debts.
 - ii. Ct cites CAT definition of torture. See *infra* Rol 1179-2004
5. 05/30/2005; Rol
 - i. Case about an employer that was given a prison sentence for withholding his employees wages and failing to make the appropriate contributions to social security.
 - ii. Ct holds that this is a criminal act, and therefore the prison sentence is not in violation of the American convention that forbids prison sentences for failing to pay debts
 - iii. Ct cites CAT, See *infra* Rol 1179-2004

¹ Note: some later cases deal differently with the application of statutory limits in civil (reparations) vs. criminal suits.

6. ****12/14/2005; Rol 5468-2005 – initial judgment for torture victim, later remanded to Appeals Court.**

- i. A prisoner who was on a hunger strike alleges he has been tortured by the prison's superintendent and prison guards (who were under direct orders from the superintendent).
- ii. The abuse consisted of insults and multiple beatings.
- iii. The Ct makes extensive use of the CAT to interpret national legislation (which it called 'subservient' to international treaties). In particular, it uses the CAT to interpret the meaning of torture and 'illegal incentives' within national law.
- iv. Defendant argued a due process violation in the evidence presented against him; Ct finally remands the case to the appellate court, with the instructions that it should determine whether the judgment should be vacated because of due process and assumption of innocence violations.

7. ****05/30/2006; Rol 3215-2005 – kidnapping, torture, disappearance case; ruling for torture victims**

- i. This case has a very long fact pattern detailing the general *modus operandi* of the military forces re: kidnapping, torture and disappearances, based on victims' testimony.
- ii. The Ct finds the defendants guilty of kidnapping and concludes that Chile's amnesty law cannot be applied to crimes against humanity, as this would be incompatible with several international treaties to which Chile is a ratifying party, including the **Convention Against Torture**.

8. **** 06/06/2006; Rol 1528-2006 00—kidnapping, torture, disappearance case; ruling for torture victims**

- i. International treaties, binding on Chilean national law, prohibit the application of amnesty laws to crimes against humanity; thus, defendant can be found guilty of and sentenced for kidnapping (even though national amnesty laws, taken alone, would absolve him).
 - ii. Ct cites several international treaties, including the **CAT**, the Inter-American Convention, the Genocide Convention, the Geneva Convention and cases from the Inter-American Court (in particular the Barrios Altos case) that proscribe amnesty for crimes against humanity
9. 06/16/2006; Rol 473-2005 – *ruling against victim's request that testimony collected by the National Commission on Political Prisoners and Torture be unsealed.*
- i. Petitioners asked the Court to unseal information contained in the National Commission on Political Prisoners and Torture ("Comisión Nacional sober Prisión Política y Tortura) that was relevant to a case they were building against Pinochet. The Commission was created by a presidential decree in 2003 with the goal of establishing the identity of those victims of arbitrary detention and torture from 1973 to 1990 and to offer them reparations. Information uncovered by the Commission is to be sealed for 50 years, but victims and other witnesses can reveal, if they so wish to, the same information to the Courts.

- ii. Petitioners argued that the sealing of this information was an obstruction of justice, and that it violated different international instruments, amongst them the **Convention Against Torture**
 - iii. The Corut ruled that the purpose of the commission was to guarantee victim safety and to protect their identity, to encourage victims to come forth and tell their story. Thus, keeping this information secret is not a violation of national or international law, but rather, a vehicle to respect the experiences and wishes of those victims.
10. 10/16/06; Rol 5324-2006; prison sentence for outstanding debts; *ruling against victim**
- i. Here the Court read an exception to the general rule that nobody should serve a prison sentence for not paying back debts. In particular, the Ct held this rule did not apply when individual criminally withheld part of his employees dues but failed to make contributions to the Social Security Administration (I think this is about the social security administration, but the case basically was about a business person who withheld part of his employees salary to allegedly make contributions on their behalf to Social Security but never did and was then given a prison sentence).
 - ii. Ct cites Convention Against Torture; again as in the first two cases cited in this section it is not quite clear why.
11. 07/03/2007; Rol 1380-2007; *ruling against petitioners*
- i. Petitioners had relied on article 8 of Chile's Constitution—which establishes that acts and resolutions of the State should be public—to ask for the disclosure of the State of Chile's vote in the election of members to the Human Rights Commission, as well as its reasoning.
 - ii. The Court cites multiple international treaties, including CAT, that establish the election by secret vote of treaty committee members, both to safeguard the independence of different States and for diplomatic reasons.
 - iii. The Ct holds that Chile's non disclosure of its vote in the election of Human Rights Committee members does not conflict with Article 8 of the Chilean Constitution, and is in accordance with International Human Rights interests, because it's non-disclosure serves the national interest (an exception to Article 8's public disclosure clause).
12. 09/05/2007; Rol 6525-2006; Statute of limitations for crime of kidnapping and torture; applicability of attenuated sentences; *ruling against victims insofar as perpetrators are given attenuated sentences.*
- i. Ct holds that there is no statute of limitations on grave human rights violations and bases its decision on the applicability of General Principles of International Law which were already in effect at the time of the crime in question (note that this is different from case rol: 3808-2006 below in general torture cases section). Mentions that several international treaties, **including CAT**, establish that there are no statutory limitations to grave human rights violations (including torture), as well as the decision in the case Velásquez Rodríguez by the InterAmerican Court of Human Rights. These treaties, while not applicable at the time of the crime in question, contribute to shape and interpret these General Principles of International Law mentioned above.

- ii. Ct also holds that international treaties do not proscribe the application of attenuated sentences as established by national law, because attenuated sentences do not constitute amnesty or exoneration (similar to case, rol: 3808-2006)

13. 09/21/2007; Rol 3744-2007; Fujimori extradition case; ruling for victims

- i. Ct grants Perú's extradition petition for former President Alberto Fujimori.
- ii. Ct cites the **CAT** to stand for the proposition that a head of state does not possess criminal immunity against the crime of torture and that, thus, Fujimori is not immune to prosecution.
- iii. The Ct also notes the applicability of other international instruments, including the InterAmerican Convention Against Torture.
- iv. Ct also mentions torture in the context of the fact section to describe that accusations raised against Fujimori constituted 'rational indices of culpability' as required by the extradition treaty.

14. 10/18/2007; Rol 4691-2007; Applicability of Geneva Conventions and International Treaties; Statute of Limitations – ruling against victim

- i. The Geneva Conventions are not applicable to the instant case (dealing with a kidnapping and disappearance), because it cannot be shown that the country was in the middle of a civil war or internal armed conflict. The Inter-American Convention on Human Rights and the ICCPR are likewise not applicable, because they were ratified posterior to the commission of the crimes in question.
- ii. Even if the crimes committed were considered crimes against humanity, there is no international treaty or general norms of public international law applicable that can establish the non-applicability of statutory limits. To do so would go against the principle of legality (that forbids retroactive laws or punishments). *** note that this opinion goes against previous opinions that declare the non-applicability of statutory limits to grave human rights violations ***
- iii. Three dissident votes disagree with the majority and state that General Principles of International law establish the non-applicability of statutory limits to crimes against humanity and to grave violations of human rights. The votes also argue for the applicability of the Geneva conventions.
 - 1. **Dissenting votes mention CAT** to stand for the proposition that there can be no amnesty for grave human rights violations and that the State is under an international obligation to prosecute perpetrators of such abuses.

B. Tribunal Constitucional

- 1. 06/05/2007; Rol 519
 - i. This case was brought by a debtor asking the Constitutional Court to declare unconstitutional a law that allowed prison terms for failure to pay debts.
 - ii. Ct holds that arrests for failure to fulfill a legal obligation does not constitute a prison term for failure to pay debts, given that the latter corresponds only to contracts carried out between two private parties.

- iii. In the course of its decision, the Ct. refers to the CAT which prohibits not only torture but also cruel, degrading and inhumane punishment – and cites that the later includes arbitrary detention. (But in this case the Court holds that the law in question that allows for the arrest of persons that fail to contribute to a social security fund for their employees, does not constitute arbitrary detention.)
- 2. 04/24/2007; Rol 576
 - i. Same as above, but in the context of the possibility of arrests and prison sentences for failure to contribute to Social Security.
 - ii. CAT mentioned in the same context as above.

C. Corte de Apelaciones de Santiago (Appellate Court, City of Santiago)

- 1. 09/30/1994 kidnapping and torture cases that took place between 1973-74 (this is a disappearance case – kidnapping + bodies never found, similar to many others).
 - i. Holding amnesty law No. 2.191 is not applicable to this particular kidnapping case
 - 1. kidnapping is a continuing and permanent offense (‘qualified kidnapping’) until the bodies of the victims are found and, as such, continues past the time limit set by these amnesty laws
 - ii. Noting that because from 1973 to 1974 Chile was engaged in an internal armed conflict –as defined by the Geneva conventions -- the laws of armed conflict apply to the present case. Under the Geneva Conventions there can be no amnesty for the offenses of kidnapping and torture.
 - 1. The Ct. also concludes that the Geneva Conventions have been incorporated into national law, following Congressional approval. After incorporation of a treaty to national law, it supersedes national norms (in this case, amnesty laws).
 - iii. **Noting also that the Convention Against Torture, having been approved by Congress, applies to the instant case, and forbids amnesty for kidnapping and torture**
 - 1. The Ct. holds: “The Convention Against Tortures imposes a positive obligation on the State, and in particular on national tribunals, to respect and promote treaty obligations. These include an obligation to investigate torture, particularly in cases where the identity of individual perpetrators is known. According to the CAT, there is no statute of limitations, nor amnesty for the crime of torture.” (translation not 100% literal).
 - iv. Ct. also cites to the ICCPR and the American Convention.
- 2. 08/02/2007; Rol 14281-2006 – this is in conflict w/earlier holdings
 - i. Ct holds that there was no internal armed conflict in Chile in 1976, and thus the Geneva Conventions do not apply. Even if we construe the crime as a “crime against humanity,” no international treaty applies, as this would violate the principle of legality (forbidding retrospective punishment) because the applicable treaties were ratified after 1976, or were never ratified by Chile. Ct cites as applicable treaties only the Convention on the Non-Applicability of

Statutory Limitations on War Crimes and Crimes Against Humanity, ICCPR, Inter-American Convention

- ii. Dissent states that other treaties should be considered as binding on Chilean state and cites the Genocide Convention, **and CAT** + other intl documents similar to those relied upon by the same ct in previous years.

3. 12/18/2007; Rol 11801-2006 –

- i. Non-applicability of statute of limitations to crimes against humanity. In 1973 Chile was submerged in an internal armed conflict, and thus common article 3 of the Geneva Conventions applies and the State is under an obligation to prosecute these crimes w/o statute of limitations
- ii. Following orders does not exculpate military officers from responsibility
- iii. There was a systematic pattern of state violence, including torture, that violates fundamental human rights norms. The State has an affirmative obligation to prosecute and sanction crimes against humanity, and cannot grant amnesty to perpetrators of these abuses, as established in multiple human rights documents, among them: the Genocide Convention, **the Convention Against Torture**
- iv. Ct also cites Inter-American Ct cases to stand for the proposition that States have an affirmative obligation to prosecute and punish crimes against humanity, and that there can be no amnesty given to perpetrators of crimes against humanity (Velazquez-Rodriguez and Barrios Altos, respectively)

4. 12/18/2007; Rol 1579-2007

- i. Same holding as above, **also cites CAT.**
- 5.

General Torture Cases

A. Corte Suprema

1. 02/06/1992; Rol 28941

- i. Habeas case on behalf of prisoner accused of torturing civilians during the military dictatorship. Prisoner alleges that a) amnesty laws apply to his case; b) the statute of limitations had passed when proceedings against him were initiated
- ii. Ct held that the amnesty provisions apply to the detainee and that the statute of limitations had indeed passed, so that no criminal responsibility could be imputed to the detainee.
 1. Note that Ct below had argued that these were crimes against humanity and that neither amnesty nor the statute of limitations applied
- iii. Torture mentioned in the facts section, as an unproven allegation that the court below mistakenly took as a proven fact.
- iv. Ct highlights that this alleged kidnapping and torture case did not fit into a pattern of crimes against humanity in part because it took place 5 days after the coup d'etat when the country was in a state of chaos.

2. 11/16/1994; Rol 30751—whether military tribunals have jurisdiction to try kidnapping, torture and arbitrary detention cases that took place in 1974

- i. The alleged commission of a crime by a military officer, taken alone, is insufficient to grant jurisdiction to a military tribunal. In this case the Ct found that military jurisdiction was appropriate because the alleged crimes were carried out during an armed conflict (or internal war) and because they were perpetrated by military officers in the pursuit of their military duties.
 - ii. Torture mentioned as part of the fact pattern, but this case is about determining whether military tribunals had jurisdiction
- 3. 01/08/1996; Rol – whether military or ordinary tribunals should have jurisdiction over a case**
- i. This case arose from a jurisdictional controversy between an ordinary (civil) court and a military court over a case.
 - ii. The Ct holds that this conflict is moot because any responsibility that could have been assigned to these officers has been extinguished.
- 4. 12/11/1996; Rol 1537-96**
- i. Ct declares innocence of a particular defendant who had previously been found guilty of kidnapping followed by homicide, and illicit association. Defendant was part of the ‘carabineros.’
 - ii. Torture is discussed as part of the proven facts. Ct describes the method used by State police to kidnap, disappear and torture civilians. But new evidence showed that this particular defendant had not committed these acts.
- 5. 01/28/1997; Rol – Amnesty laws**
- i. Ct holds that amnesty laws absolved alleged perpetrators of any criminal responsibility for alleged crimes (that included kidnapping and torture) perpetrated in 1974
- 6. 6/24/1997; Rol 4548**
- i. Drug possession case. Ct found that because the drugs were for the accused’s personal use, he should be absolved.
 - ii. The defendant had alleged he had been tortured by the police (“Carabineros”) while in detention, and had medical report to prove it. The Ct. used this evidence of torture to discount the defendant’s self-incriminating testimony and ultimate confession, but the proceedings do not themselves deal with torture charges.
- 7. 3/11/1998; Rol 2725-96**
- i. Ct holds that there was **no “armed conflict” in Chile** during the dictatorship (no time period specified) within the meaning of the Geneva Conventions
 - ii. Ct also holds that national law has primacy over international treaties, and international human rights treaties in particular, especially before 1989—when Chile ratified human rights treaties.
 - iii. Cites to the Geneva Convention, the Inter-American Convention, the Universal Declaration, the Vienna Convention,
- 8. 8/19/1998; Rol 973-97**
- i. This is a procedural decision, related to the steps a judge has to take before he/she can declare amnesty. Ct holds that a judge cannot grant amnesty before first establishing the facts of the case, including individual responsibility.
 - ii. Torture is mentioned in the context of the Geneva conventions
- 9. 08/20/1998; Rol 28-97**

- i. Same as above – Ct seems to be copying sentence from above case verbatim
- 10. 09/09/1998; RoI 469-98**
- i. Ct holds that “in order to apply amnesty laws, the identity of the individual perpetrators of the crime must be identified clearly and convincingly, as this is the only way to ‘extinguish’ the criminal sanction that they would otherwise deserve, absent amnesty laws”
 - ii. Torture mentioned in the context of the Geneva conventions only
- 11. 07/06/1999; RoI 1941-1999**
- i. Use of police force to control violence in a detention center. Witnesses alleged that although detainees had bruises, those were the result of the proportional use of force to control the crowds, and not the result of torture in the hands of police.
12. 03/29/2000; RoI 2894-2000
- i. Ct holds that the doctrine of due obedience to their military superiors did not exculpate the actions of detectives, who carried out detentions without due process of law (Ct mentions no judicial warrant was ever issued in these cases). Detectives should have known their actions were in frank violation of multiple rules and regulations.
 - ii. Plaintiff had alleged members of the military who captured her had tortured her, but the case itself is not about whether or not she was tortured
- 13. 06/01/2000; RoI 1.075-00**
- i. This is a jurisdictional case regarding whether individuals that belonged to the military (and who had perpetrated crimes against the civilian population during the military dictatorship) should be tried under a military or a civil court.
 - ii. Ct holds that, because these military units were acting outside of the military authority delegated to them by the people, they were not subject to military law.
 - iii. The Ct points out that military installations were never designed to be torture centers, and that military law was not applicable when they were utilized as such.
- 14. 11/11/2000; RoI 3.243-2000**
- i. This is another jurisdictional competence case (between military and civilian courts)
 - ii. The crimes perpetrated by members of the CNI were common crimes, not subject to military law, and should thus be prosecuted under civil, not military, law.
 - iii. Torture mentioned in the same context as above.
- 15. 11/12/2000; RoI 3.243-00**
- i. Same as above; Ct specifies that the mere fact of belonging to the armed forces does not convert any activity carried out by military members into an act punishable only under military law.
16. 01/31/2003; RoI 4053-2001 – **Amnesty Laws kidnapping and disappearance case**
- i. Ct reiterates that amnesty laws must be applied to individual persons not to general punishable acts. Thus, amnesty requires, first, a determination of guilt

- and of the appropriate penalty and, second, that the corresponding penalty not be applied.
- ii. The Military Tribunal erred in failing to investigate individual guilt before immediately declaring amnesty, especially because it was in the best position to carry out investigations aimed at elucidating allegedly criminal acts carried out by military personnel.
 1. Ct posits that common article 3 of the Geneva Conventions does not apply in this case
 2. Ct posits that ICCPR does not apply b/c it was ratified after the period covered by amnesty laws
 - iii. The case includes a report by the prosecution, which alleges the Geneva conventions do apply to this case and that there has been a violation against its prohibition against torture. The prosecution also mentions guarantees under the ICCPR and the American Convention have been violated.
17. 10/22/2003; Rol 4257-2003 – whether Pinochet was fit to stand trial
- i. Ct holds that Pinochet was unfit to stand trial and that all cases against him at that time were thus moot; similarly Ct holds against removal of head of state immunity. Torture mentioned in the context of a fact pattern showing that Pinochet was responsible for torture and arbitrary detention.
18. 03/10/2003; Rol
- i. Jurisdictional case. Ct holds common crimes should be tried in civilian courts.
 - ii. The prosecutor's report, in setting forth the facts, describes how the petitioner had been tortured at the hands of military leaders
19. 05/07/2003
- i. Ct holds the Geneva conventions do not apply to the period covered by amnesty laws.
 - ii. Ct further holds that b/c the statute of limitations had passed, the State had no responsibility to give reparations to petitioners (please note – I found the law confusing in this area, I'll need to double check to make sure this is an accurate description of the sentence).
 - iii. Torture mentioned in the 'facts' section, and by petitioners who argued the Geneva convention had been violated.
20. 02/03/2004; Rol 465-2004
- i. Habeas corpus proceedings; petitioner alleges that his testimony was obtained through torture
 - ii. Ct holds petitioner's detention was ordered according to law
21. 27/04/2004; Rol 3727-2003
- i. Allegations of abuse and torture at the hands of police officers conducting an arrest.
 - ii. Ct considered bruises on the accused to have been a consequence of the arrest, and not of police brutality
22. 08/26/2004; Rol 2966-2004
- i. This case is related to "Operación Condor," and sought to bring criminal proceedings against Pinochet, which first required that he be deprived of any political immunities, but the Ct here was resolving a narrower legal issue

- ii. In its sentence the Ct sets the legal parameters of what constitutes a legal pre-trial detention.
- iii. The facts section details several instances of torture at the hands of military personnel

23. 02/09/2005; Rol 457-2005

- i. Ct holds that international norms have primacy over national norms and thus the first should modify the latter so that international standards are not violated.
- ii. Ct also holds that because the homicides at issue in this case are crimes against humanity, they are subject neither to a statute of limitations nor to amnesty laws. Ct denies the petitioners' appeal.
- iii. The lower Court (Appellate Court) states that because Chile was immersed in an internal armed conflict during 1973-78, common article 3 of the Geneva convention applies; thus, amnesty laws are not applicable to grave human rights violations, such as intentional homicide, torture, inhumane treatment and illegitimate detention which were carried out during an armed conflict.

24. 03/29/2005; Rol 4622-2002

- i. This case concerns whether a decision and a sentence by a military tribunal against a military officer accused of kidnapping and torture constitutes *res judicata* for the purpose of civil courts. (whether the same person could be judged both in a military and in a civil court)
- ii. Ct holds that, because the military tribunals had not carried out a full investigation into the allegations of torture, the lower civilian court could legally hear the case.
- iii. Torture is mentioned in the facts section, and it is one of the crimes against humanity that form the basis of the proceedings initiated in the lower court.

25. 05/19/2005; Rol 1897-2005; Legality of amnesty laws

- i. Ct rules that State of Chile violated international treaties previously ratified by Chile, such as the American Convention and the Geneva Conventions, when it passed amnesty laws that gave immunity to perpetrators of grave human rights violations, including torture.

26. 08/04/2005; Rol 457-2005 – Legality of amnesty laws

- i. Ct rules that the in embargo, la ocurrencia de tales acciones, no es suficiente razón para tener por establecido que en Chile existía un "conflicto armado no internacional", por lo que no puede declararse imprescriptibles los delitos cometidos durante su vigencia, conforme al Convenio de Ginebra (Considerando Séptimo, Sentencia de Casación, Corte Suprema).
- ii. El hecho que dicho Convenio establezca que "ninguna Alta Parte contratante tendrá la facultad para autoexonerarse a sí misma o exonerar a otra parte contratante de responsabilidades incurridas por ella o por otra parte contratante", significa que el Estado que cometió la ofensa grave es responsable de compensar económicamente los daños producidos, aunque no haya castigado a quien efectivamente cometió la infracción, y que le está vedado a los Estados pactar renunciaciones o liberaciones a dicha obligación de pagar compensaciones económicas en los tratados de paz que suscriban. Motivo por el cual puede perfectamente amnistiar la responsabilidad penal de

quienes cometieron los delitos que generan su responsabilidad económica (Considerando Noveno, Sentencia de Casación, Corte Suprema). Los tratados internacionales sólo se pueden aplicar si a la fecha de ocurrencia de los hechos, se encontraban vigentes (Considerando Décimo, Sentencia de Casación, Corte Suprema).

27. 09/05/2005; Rol 3925-2005

- i. Specifies that kidnapping is a continuing offense until the bodies of the victims are found and, thus, that the amnesty law (which applies to acts committed within a specific time period) does not apply.
- ii. Notes that the Geneva Conventions also prohibit a country to exonerate itself from prosecution when grave crimes have been committed – these include intentional homicide, torture, cruel and unusual punishment and arbitrary detention.

28. 10/26/2005; Rol 5030-2005

- i. Victim was challenging his exclusion from the “victims’ list” of the National Commission Against Torture (which was established by the Chilean government for the purpose of offering reparations to torture victims)
- ii. Ct holds for procedural reasons that it cannot hear the petitioner’s case

29. 12/22/2005; Rol 695-2003

- i. Families of the disappeared had accused state officials of having detained the victims arbitrarily and tortured them. A military judge had summarily granted amnesty to these state officials, citing the country’s amnesty laws.
- ii. The Ct overturned the Military Judge’s decision and holds that the case must be re-opened. Amnesty cannot be granted prior to carrying out a full investigation with the purpose of identifying the particular names of the perpetrators, the type of violations perpetrated, and the whereabouts of the victims.

30. 01/04/2006; Rol 5212-2005; Military vs. ordinary Jurisdiction case.

- i. Conflict btw ordinary and military courts re: hearing of a case in which a military officer was accused of kidnapping and torture.
- ii. Ct holds that ordinary courts should have jurisdiction: military courts cannot hear cases involving ordinary crimes against civilians committed by military officers, even if these crimes were perpetrated while carrying out their military duties.

31. 08/06/2006; Rol 2079-2006– 1985 homicide- *rules for the victim*

- i. Members of the National Center of Information (“Central Nacional de Informaciones”, CNI) carried out an organized campaign to neutralize and kill the victim who, according to the CNI was involved in subversive activities and belonged to a leftist revolutionary group (Movimiento de Izquierda Revolucionario, MIR)
- ii. The Ct determines that the victim’s homicide (carried out in 1985) qualifies as a crime against humanity, recognized under international human rights law. The Ct goes on to state that there is no statute of limitations for crimes against humanity, and details that these crime include: genocide, forced disappearances, torture and massive and systematic human rights violations.

- iii. Court cites to various international law instruments (although not to CAT) including the American Convention, the Geneva Conventions, The Convention against genocide and *jus cogens* norms and general principles of international law as incorporated to Chilean national law, having primacy over national legislation, and binding on national courts
32. 09/05/2006; Rol 1439-2006– head of state privileges and immunities, Pinochet – *ruling for Pinochet – later overruled*
 - i. Ct denies petitioners’ request that Pinochet be stripped of all privileges and immunities so that he could be tried from criminal acts related to the Death Caravan (“Caravana de la Muerte,” Pinochet’s army accused of killing political prisoners and in general members of opposition movements)
 - ii. Ct cited Pinochet’s poor health as a justification
 33. 09/07/2006; Rol 5323-2003–1996 disappearance and homicide of an infantry soldier (who was performing the mandatory military service)– *ruling against the victim due to insufficient evidence*
 - i. A soldier who later disappeared had told his family that he had suffered torture and abuse in the military base where he was stationed, allegedly because he had threatened to turn in three other soldiers who had sodomized him.
 - ii. Three people were initially found guilty and subsequently an appellate court reversed their sentence .
 34. 10/03/2006; Rol 2707-2006 head of state privileges and immunities, Pinochet – *ruling for victims against Pinochet – overrules previous case above*
 - i. Long fact pattern detailing different instances of torture
 - ii. Cites to many international documents, including the 1975 **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** but, strangely, not to CAT.
 35. 10/11/2006; Rol: 1963-2005 – reparations for human rights violations, Ct rules against victim: victim could not get reparations twice, if victim accepts reparations under particular reparations law, victim cannot obtain damages in a court action concerning the same incidents
 36. 11/27/06; Rol: 5922-2006 – drug arrest and detention that included allegations of torture, but the case itself was about due process; remanded to lower ct for determination
 - i. Defendants allege violations of due process guarantees
 - ii. Ct. refuses to hear case (for procedural reasons), orders lower Ct to determine whether due process guarantees (including judging by an independent and an impartial tribunal, and the presumption of innocence) have been violated
 37. 12/27/2006; Rol: 6049-2005; statute of limitations for civil actions seeking reparations for disappearance and torture cases (during Pinochet); *ruling against victim: as opposed to criminal actions, civil actions are subject to statute of limitations*
 38. 01/24/2007; Rol: 5673-2004; Ct overrules Amnesty laws

- i. Since 1949 (upon signing the Geneva Conventions) the State of Chile is legally precluded from declaring void its criminal responsibility via amnesty laws or statutes of limitations.
 - ii. Amnesty laws clearly had an impact on victims' rights to initiate a legal action against those responsible of human rights violations
 - iii. It is clear that State agents carried out crimes against humanity [during the dictatorship], and that their crimes were implicitly sanctioned by a system that, in fact and in law, enabled or guaranteed their impunity.
 - iv. Ct cites several international covenants and treaties (ICCPR, American Convention) to stand for the proposition that Chile cannot renege on its obligation to investigate and punish grave human rights violations.
 - v. Ct lists torture as one of the crimes that qualify as crimes against humanity under international law (citing article 50 of Geneva conventions I
39. 03/19/2007; Rol 6528-2006;
- i. El delito de secuestro se encuentra entre aquellos que atentan contra la libertad y seguridad personal. Los principales bienes que protege, son la seguridad individual y la libertad ambulatoria y, presupuestos para su configuración son la detención y encierro de una persona verificados en contra de su voluntad por quien no tiene facultad ni autoridad para disponerlo. Si las víctimas fueron aprehendidas por funcionarios del Estado, mantenidas en un lugar de encierro y sustraídas de un legítimo procedimiento de privación de libertad, generándose las condiciones para su desaparición, la forma en que aparecen vulnerados derechos fundamentales como la libertad personal y seguridad individual, excluye la aplicación del régimen de agravios inferidos por funcionarios públicos, más benigno, porque si bien se trata de agentes del Estado, su actividad no puede validarse en pro de una función pública o del bien jurídico colectivo, tanto menos si de ella ha seguido desaparición forzada.
40. 05/02/2007; Rol 1905-2007
- i. Perú petitioned the Chilean government to grant preventative detention measures and the extradition of Víctor Raúl Paiba Cossios for the crime of terrorism.
 - ii. The accused denied belonging to terrorist organizations, noting that he had been tortured and falsely accused by Peruvian military forces.
 - iii. Ct denies Perú's petition, citing that the statute of limitations had expired and explaining that the extradition treaty between Chile and Perú specifically required that the statute of limitations not have run out. In addition, the Ct holds that petitioners have not presented sufficient proof that Cossios was a member of a terrorist organization
41. 07/09/2007; Rol 1859-2006
- i. This is a physical and sexual abuse case. Defendant was accused of torturing the petitioner's child and of sexually abusing her.
 - ii. The Ct rules that there is insufficient evidence to convict.
42. 07/24/2007; Rol 3808-2006

- i. Whether attenuated sanctions can be applied to several former military officers (now in their 50s and 70s) for the crime of kidnapping, torture, and homicide committed against petitioners' family member.
- ii. Ct holds that the application of a domestic criminal law that allows for reduced penalties when a certain period of time has passed between the commission of the crime and the sentence is lawful, even in the case of kidnapping and torture because 1. it does not amount to amnesty and 2. several international treaties that proscribe it are not applicable:
 1. Ct holds amnesty's laws are not applicable, first, because the acts in question go beyond the period covered by these laws (as the body was found in 2002, and amnesty applies only to acts between 1973 and 1978); second (and most importantly according to the Ct) because several international treaties ratified by Chile proscribe Amnesty laws for grave human rights violations, which include torture.
 2. Re: applicability of international treaties:
 - a. Ct also holds that, during the military dictatorship, there was no armed conflict within the meaning of the Geneva Conventions, which are thus not applicable to the instant case.
 - b. The ICCPR only took effect in 1989, after the commission of the acts in question – and thus their rules on statutes of limitations do not apply.
 - c. Ct also mentions the inapplicability of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity

43. 07/24/2007; Rol 1133-2006; Statute of Limitations for a civil suit seeking to obtain reparations from the State of Chile for damages caused by kidnapping and disappearance of family members.

- i. Ct holds that a civil suit for reparations for kidnapping and disappearance is different from a criminal action against the state: the former is subject to a statute of limitations, which had expired at the time of the action.
- ii. Although the Inter-American Convention on Human Rights establishes the non-applicability of statutory limits for human rights violations, this Convention is not applicable to the instant case because it was ratified after the events in question took place.
- iii. The Geneva Conventions do not apply to civil suits for reparations, but rather to criminal responsibility.
- iv. Law N° 19.123 – which gives specific economic benefits to the families of the victims of human rights violations – does not suspend the statute of limitations established by the civil code, because by the time this law was passed the applicable statute of limitations had already expired.

44. 10/11/2007; Rol 2370-2007; Statute of Limitations; Amnesty Laws; Due Obedience

- i. Torture mentioned in the fact pattern, as part of the abuses perpetrated against the disappeared victim.

- ii. This case deals with two types of actions: criminal and civil.
- iii. Re: Criminal Action
 - 1. Ct holds that kidnapping is a continuing offense and that, thus, no statute of limitations applies until either the victim reappears or his/her body is found.
 - 2. Because Amnesty laws apply to crimes committed between 1973 and 1978, and because the crime of kidnapping is on-going (past 1978), amnesty laws are not applicable to this case.
 - 3. According to international treaties, amnesty should be limited to those crimes that do not violate basic human rights.
 - 4. The Geneva Conventions are applicable to the events that took place during the military dictatorship, and forbid the application of amnesty laws to crimes perpetrated during an internal armed conflict.
 - 5. Military actors cannot be exonerated on the basis that they were following orders: the Ct applies the “reflexive due obedience” doctrine that states that military officers have a duty to question orders from their superiors that violate individual human rights.
- iv. Re: Civil Action
 - 1. Ct holds that the statute of limitations *does* apply to the civil suit (see previous case above).

45. 10/22/2007; Rol 516-2007; Kidnapping and Disappearance case; Statute of Limitations; Amnesty Laws; ruling for victims

- i. Because Kidnapping, torture and disappearances are crimes against humanity, General Principles of International law (including *jus cogens* norms) apply. These norms dictate the non-applicability of statutory limits to the prosecution of grave violations of human rights. These norms are also incompatible with amnesty laws that seek to exonerate perpetrators of grave human rights abuses.
- ii. The State of Chile cannot pass any law that would grant any measure of immunity to perpetrators of grave human rights abuses, as this would go against international treaties that are incorporated into Chilean national law, such as, the ICCPR and the Universal Declaration of Human Rights.

46. 11/12/2007; Rol 6626-2005; Statute of Limitations; Amnesty Laws; ruling against victims

- i. Torture is part of the fact pattern describing abuses committed by military officers against victims, and taken as proven by the Court.
- ii. Statutes of limitations for criminal acts have long been part of Chilean national law; to hold their non-applicability in the case of grave human rights violations may lead to grave inequalities in the treatment of defendants and may go against general principles of national law.
- iii. It cannot be established that during the military dictatorship Chile was under an internal armed conflict within the meaning of the Geneva Conventions; thus humanitarian law is not applicable.
- iv. Even if the Geneva Conventions were applicable, they do not explicitly forbid the application of statutory limits to individual criminal

responsibility. The Convention on the Non-Applicability of Statutory Limits to War Crimes and Crimes Against Humanity is not applicable to the crimes in question because it had not been ratified by Chile at that time.

- v. **** Note that ii-iv above is different from previous holdings by this Court****
- vi. Dissident votes would have held the Geneva Conventions applicable, given that the State of Chile had in fact declared a state of emergency. According to the dissent, the Geneva Conventions not only prohibit amnesty laws, but also prohibit the application of statutory limits to criminal prosecutions for crimes committed during the armed conflict. National criminal laws that allow for statutory limits for criminal acts were designed to operate during times of peace and not during those situations in which democratic institutions were not functioning, as was the case here.

47. 11/13/2007; Rol 6188-2006; Applicability of Amnesty Laws; Statute of Limitations; Kidnapping, torture and disappearance cases; *ruling for victims (but against victims insofar as attenuated sentences are allowed)*

- i. Ct holds that starting from 1973, **Chile was in an internal armed conflict w/in the meaning of the Geneva Conventions.** Thus, according to common article 3, The State of Chile was under the responsibility of guaranteeing the physical integrity of those it kept in detention and under its control. In addition, Chile was not allowed to exonerate perpetrators of grave human rights violations against those detained by the State. Thus, amnesty laws are not applicable.
- ii. This prohibition against self-exoneration also mandates the inapplicability of statutes of limitation against criminal prosecutions that were in force during times of peace. Thus, these grave human rights violations committed during an internal armed conflict are not subject to statutory limits.
- iii. However, perpetrators can be given an attenuated sentence, as this does not constitute amnesty and only mitigate criminal responsibility
- iv. The Ct also held that it could not consider a civil action seeking reparations from the State of Chile that was brought together with the criminal suit, for procedural reasons.

48. 11/29/2007; Rol 3515-2007; kidnapping and torture that took place in 2005, not during the dictatorship and at the hands of private persons (not the military); *ruling for victim*

- i. Petitioners claimed that the Appeals Court had abused its authority in declaring the invalidity of an initial oral trial and ignoring facts already determined as true by the first tribunal.
- ii. This is a procedural decision dealing with a kidnapping and torture case, in which the Supreme Court considers that the Appeals Court has abused its discretion and holds that it has proper jurisdiction to hear the case.

49. 01/29/2008; Rol 4065-2006; suit for reparations for kidnapping, torture and disappearance during military dictatorship; ruling against victims
- i. Statutory limitations are applicable in a civil suit seeking reparations for crimes committed by the State of Chile.
 - ii. The Statutory term stops running when a civil action is initiated in a competent court. Nevertheless, a criminal prosecution does not toll the statutory limits of a civil suit.
 - iii. Here, the statutory term to initiate a civil suit had long expired, and the lower court erred in agreeing to hear the case.
 - iv. Torture mentioned in the fact pattern.

B. Corte de Apelaciones de Santiago (Appellate Court, City of Santiago)

50. 04/20/2006; Rol 24474-2005, kidnapping, extrajudicial executions, torture

- ii. Ct holds there is **no statute of limitations** that bans prosecutions against state agents involved in the shooting and disappearance of civilians during the military dictatorship, because these are crimes against humanity under international law.

iii. Cites to the Geneva Conventions, *jus cogens*, and general principles of international law

iv. Does not mention CAT

51. 7/31/2006 Rol: 146-2006, kidnapping and torture case

- v. Similar to the case summarized above; cites to both national and international law (**Geneva Conventions, *jus cogens* norms, ICCPR**) to hold that **kidnapping and torture are not subject to amnesty laws, and do not have a statute of limitations.** Does not cite to CAT, though.
- vi. Ct holds that these particular kidnappings were conducted by State agents and in the context of a systematic State plan against a civilian population, and thus constitute a crime against humanity.

52. 11/08/06; Rol 7797-2006

- vii. Ct finds former military officer guilty of homicide for killing and hiding the bodies of two civilians in a mass grave. In addition, **because these are crimes against humanity the statute of limitations does not apply.** (Ct finds that these crimes were committed in the context of a systematic plan by the State to arbitrarily detain, torture, disappear and execute civilians).
- viii. Several international instruments cited, to define crimes against humanity and crimes of aggression: **Geneva Conventions**, Inter-American Court jurisprudence, Genocide Convention, Rome Statute, Nuremberg Tribunal.

53. 03/23/07; Rol 1211-2002

- ix. Ct holds that although Chile has not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; this has become a *jus cogens* norm of international norm that Chile cannot ignore.
- x. Article 5 of Chile's constitution recognizes that international treaty law is binding on the Chilean State, and establishes the duty to respect and promote

fundamental rights. The right to reparations is one such right, guaranteed not only by the Constitution but also by ratified international treaties such as the UN and OAS charters, the Interamerican convention on human rights, amongst others.

xi. Ct. awards reparations to petitioners

54. 08/03/2007; Rol 6083-2006

- xii. The crime of qualified kidnapping, in the context of crimes against humanity, does not have a statute of limitations. Thus, the Chilean state has a duty under the Geneva Conventions to prosecute perpetrators of these crimes. Ct recognizes that these fundamental human rights trump the rights of the national sovereign state.
- xiii. The qualified kidnapping that took place in the instant case were conducted in a context of systematic attacks against the civilian population.
- xiv. Cites Nuremberg Tribunal, Geneva Conventions, *jus cogens*, but not CAT.