



BACKGROUND INFORMATION ON THE EDELSTAM PRIZE LAUREATE 2016:

JUAN GUZMÁN TAPIA

Juan Guzmán Tapia was born into a Chilean diplomatic family in San Salvador, El Salvador, on the 22nd of April 1939. Mr. Guzmán is a former judge and magistrate, and currently a litigating lawyer, who earned his Law degree at the Pontifical Catholic University of Chile, Santiago.

On the 11th of September 1973, General Augusto Pinochet seized power with the help of the army. The democratically elected president, Mr. Salvador Allende was promised safe-conduct to leave the presidential palace; however, he refused to leave the Moneda Palace. Instead, he urged the people via radio to defend the democratically elected government and said that he would himself stay in the Palace and defend it with his life at stake.

The air force bombed the presidential palace and President Allende was found dead. Still today it is debated whether it was suicide or if the military had shot him. The military took power in the country after the coup on the 11th of September in 1973 and the former Commander-in-Chief, General Augusto Pinochet, took over the role as Chile's head of state. This formalized the 17th of June 1974 through "Decree-Law 527," where Pinochet was appointed the highest chief executive of the nation and became the Republic of Chile's President.

The first thing the new military regime did was to instate through a decree the martial law, which lasted until the 2nd of January 1987. Even before the coup, the coup makers had prepared locations that would function as concentration camps and torture centers. They brought in interrogation and torture experts from other countries in Latin America. CIA provided advice and support, which resulted in the "Operation Condor, a campaign of political repression and state terror involving intelligence operations and assassination of opponents. Brutal torture was institutionalized as a method in order for the military to retrieve information and to break down "Marxists" and "terrorists." These experts assisted in interrogating their fellow countrymen imprisoned at the National Stadium.

The method to make persons disappear was used systematically. As a response, some church organizations merged, relatives and human rights lawyers assembled, and worked voluntarily to collect testimonies from victims and relatives of disappeared persons. The "Vicaria de la Solidaridad" was one of the organizations that worked to gather information and evidence about the destiny of disappeared persons. The courts in Chile received hundreds of files and demands of investigation, called *habeas corpus*, from relatives and organizations that worked tirelessly towards the goal of making the responsible of crimes against human rights brought to justice. But the complaints were all rejected during the dictatorship, and no measures whatsoever were taken.

One day, in 1998, when the military has left and a democratically elected government was in power, Judge Guzmán, a member of the High Court in Chile, received a complaint against dictator Pinochet for his responsibility of crimes of genocide, torture, kidnapping, and assassination.

Judge Guzmán had been brought up in a conservative, traditional military family that had celebrated the coup in champagne on the day that Pinochet took over the power. Judge Guzmán and his wife had troubles getting medicines and other items they needed for their

babies during the Allende years, and when Pinochet took power, they supported him, hoping the economy and their lives would improve. Only later did Judge Guzmán understand the depravity of Pinochet's security forces. By the time the judge was first appointed to investigate the earliest cases against Pinochet in 1998, he was not aware of the repression and did not know the darkest details of what Pinochet's security forces had done until later. At the time, Mr. Guzman thought that the military were honest, and would never commit crimes as those mentioned in the accusations he was now confronted with. When he heard that the military had killed people without trial he was convinced it was communist propaganda, and isolated incidents. But now, Mr. Guzman saw it as his duty to investigate the accusations, and he would later say: "...it opened up the eyes of my soul..." Judge Guzmán's life would change forever; he lost friendships, stopped going to church as he was ostracized, he lost his religion and he and his family faced great danger. He had to be accompanied by his bodyguards all throughout his investigations.

The more he investigated, the more the cases grew. Mr. Guzman realized he had to narrow it down and decided to start with the crimes that were committed in September – October 1973, the month following the coup by the "Caravan of Death," a Chilean Army death squad.

Within his functions at the Court of Appeals of Santiago as a Special Judge (*ministro de fuero*), he indicted numerous state agents, mainly from the Chilean Armed Forces, for committing human rights crimes according to International Law. In the context of various sets of crimes against human rights, he also indicted former dictator General Augusto Pinochet for a set of three crimes.

In January 1998, a criminal complaint was filed against former dictator General Pinochet, based on the crimes of genocide, torture, assassination and kidnapping committed in 1976. This complaint was heard by Judge Juan Guzman, and it was related to the disappearance of a group of members of the Communist Party that were having a secret meeting in Santiago. This crime of forced disappearance was directly attributed to members of the military secret police (DINA). The case was called "Conferencia Street," as this was the location of the secret meeting. The head of DINA at the time was *de facto* General Augusto Pinochet. The main objective of the secret police force was to destroy the structure of Marxist parties, mainly the Communist Party, and to exterminate their members.

In Chile, prior to this hearing by Judge Guzman in 1998, no criminal complaint had been carried out to investigate Pinochet's accountability in crimes perpetrated by the dictatorship. Judge Guzman accepted the task of investigating these crimes despite death threats and against the still strong and domineering political presence of the Pinochet legacy. With great dedication, he began to subpoena emblematic witnesses and members of the DINA. The defendant's lawyers invoked the statute of limitations, but Judge Guzman, through brilliant and bold legal mastery, sustained that the statute of limitations did not apply to crimes against humanity or when the victims had disappeared and their whereabouts were ignored, and he rejected that petition in order to continue his investigations. Once Judge Guzman established that there existed enough evidence to demand the lifting of Pinochet's immunity based on his responsibility in these crimes, he filed this petition to the Court of Appeals of Santiago, which summarily rejected it.

Despite this setback and continued political pressure to stop his quest, Judge Guzman continued investigating the case, among many others (two hundred and fifty cases), visiting several sites where "enemies" of the dictatorship had been secretly buried. He ordered hundreds of tombs opened to exhume the remains of myriad victims of human rights violations and disappearances. One of the harshest outcomes of mass disappearances is the inability for families to accept knowledge of the deaths and give the deceased a proper religious or sacred burial. The denial of this dignity to the deceased and their families makes this crime a perpetual torture to the latter. Therefore, Judge Guzman's efforts in undertaking this task of exhuming victims' graves were fundamental to honor the essential value of human dignity. These investigations not only furthered the case against Pinochet and DINA, but they also succeeded in returning the remains of many disappeared victims to their families, finally allowing the mourners to put their terrible state of sorrow and anguish to rest.

After exhuming many bodies and investigating numerous gravesites from the north to the south of Chile, inland and at sea, as well as indicting several army generals and other officers, Judge Guzman filed two more petitions to the Court of Appeals of Santiago in order to have Pinochet's immunity lifted. Once he successfully obtained the lifting of the former dictator's immunity in the cases of "Caravan of Death" and "Condor Operation", Judge Guzman indicted General Pinochet in both of these cases, accusing him as the author of the crimes of permanent kidnapping and assassination of nearly a hundred victims.

Pinochet's military dictatorship was in power for almost seventeen years, and during this time, more than 3,100 persons were assassinated, more than 1,200 continue to be disappeared, and nearly 40,000 were tortured. Hundreds of thousands lost their jobs and were exiled. All manner of civil, political, economic and social human rights were cruelly violated. The forced disappearances the dictatorship performed were brutal crimes that left no trace of the assassinations, creating a permanent and lasting form of state terrorism.

Judge Guzman was among the first judges to consider that an amnesty enacted in 1978 did not apply in crimes of forced disappearances. He argued that it was impossible to cover those crimes with that amnesty law promulgated by Pinochet (which held from 1973 to 1978), because those crimes were not instantaneous, but continuing crimes. Finally, Judge Guzman established that neither the statute of limitations nor the exception of double jeopardy could be applied in the crimes that he investigated due to the fact that they were crimes against humanity. Judge Guzman demonstrated outstanding capabilities in analyzing and handling such a complex legal situation and innovated in the interpretation of legal obstacles that were utilized by the defendants, such as double jeopardy, the statute of limitations, and the 1978 amnesty. His important advances in the application of such legal precepts have set a precedent that has since been utilized by many progressive prosecutors and judges in Chile as well as internationally.

General Augusto Pinochet was indicted for human rights violations committed in his native Chile by Spanish prosecutor Carlos Castresana and Magistrate Baltasar Garzón on 10 October 1998. He was arrested in London six days later and held in prison for a year and a half before finally being released by the British government in March 2000. Authorized to freely return to Chile, Pinochet was there first indicted by judge Juan Guzmán, and charged with a number of crimes, before dying on 10 December 2006, without having been convicted in any case. His arrest in London made the front-page of newspapers worldwide as not only did it involve the head of the military dictatorship that ruled Chile between 1973 and 1990, but it was the first time that several European judges applied the principles of universal jurisdiction, declaring themselves competent to try judge crimes committed by former heads of state, despite local amnesty laws.

For further information, please contact:

Caroline Edelstam, co-founder and president of the Harald Edelstam Foundation

Tel: +46 (0)706 98 72 23, e-mail: caroline.edelstam@edelstamprize.org

Web page: www.edelstamprize.org / www.edelstam.org