

## CENTRAL INVESTIGATIVE COURT N° 5

### **MADRID**

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90600

PROCEEDINGS SUMMARY 19/1997 C

CRIME: TERRORISM AND GENOCIDE

SEPARATE PROCEEDING III. OPERATION CONDOR

### **WRIT**

In MADRID on sixteenth of September of the year two thousand and four.

### FACTS

**FIRST.-** The complainant, on 19<sup>th</sup> July 2004, requested acceptance of the enlargement of the Criminal Complaint against Augusto Pinochet Ugarte on charges of genocide, terrorism and torture directed against that person, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeifer, and Carol Thompson and all those who in the course of investigation should prove to have been responsible for carrying out, subsequent to the writs of 19<sup>th</sup> October and 10<sup>th</sup> December 1998, the criminal acts alleged whose purpose was to delay, hamper and impede the efficacy of the embargo, blockage and deposit of the bank account balances which Augusto Pinochet held in Riggs Bank, directly or through third parties, including members of his family.

**SECOND.-** In a document presented on 2<sup>nd</sup> September 2004 the complainant requests that the criminal complaint be enlarged to include, for the same crimes, Lucía Hiriart Rodríguez, wife of Augusto Pinochet, Mr. Ashley Lee, Fernando Baqueiro and Raymond Lund; each of them had been participants, either as joint bank account holders or cosignatories of documents used in order to perfect allegedly criminal contracts (Mrs. Hiriart), or by cooperating to deny access to the memorandum and the working documents relating to Mr. Pinochet in Riggs Bank in the year 2002 (Mr. Lee), or by personally controlling the accounts of the accused (Messrs Baqueiro and Lund). In addition, in a document dated 6<sup>th</sup> September 2004 the request has been made that Oscar Custodio Aitken Lavanchy should be accused of having cooperated in the creation of Abanda Limited, a company, to provide protection for the assets of the accused Mr. Augusto Pinochet Ugarte in 1999.

**THIRD.-** It is on the record the precautionary measure agreeing to the embargo of the assets of Mr. Pinochet, and the necessary orders have been issued to ensure their effectiveness.

Now it can be seen, from the information provided, which has been extracted from the report of the United States Senate, that at least 8 million dollars were removed, subsequent to the blocking of the accounts, a matter of public notoriety and therefore known to those responsible for the banking institution, who acted, either “*motu proprio*”

to benefit their client or acting on his instructions, on their own or through an intermediate person

### LEGAL REASONINGS

**FIRST.-** The facts which are described in the document which enlarges the criminal complaint and which are taken as reproduced herewith, reveal that, apparently, there was a fraudulent meeting of minds amongst those responsible for Riggs Bank and, in particular, between Joseph L. Allbriton, Robert L. Allbriton, Steven B. Pfeifer and Carol Thompson and the account holder Augusto Pinochet Ugarte and his wife Lucia Hiriart, with Fernando Baqueriro and Raymond Lund providing advice and direction, which led to the withdrawal, in which Mr. Ashley Lee, by concealing information, also played a part, of an important sum of money (8 million US dollars) diverting it from its legal purpose and in violation of an embargo of the Court, which would have been the indemnification of the victims of the crimes hereby pursued (genocide, terrorism, and torture).

This action is, evidently, closely and indissolubly linked to the facts under investigation, for which reason, in accordance with Article 65.1 related to Article 24.3 of the Organic Law of Judicial Power, the jurisdiction is protected by the principle of universal criminal justice, given that the concealment of assets would not exist but for that case and its rulings, and is, therefore, within the judicial framework of this Court. All of this beside the civil responsibility propitiated by such an act because, although no pecuniary responsibilities are directly derived from the concealment of assets, since it is a crime of simple activity, it is a fact that the money has disappeared in detriment of the victims and, for this to have happened, the cooperation was essential of Riggs Bank, whose responsibility will have to be determined by the means of the complaint, within this proceeding or in another proceeding as appropriate as will be decided.

As regards the place of the crime, it was in Spain (it is stated in the report that funds belonging to Mr. Pinochet were transferred with the help of Riggs Bank from other banks in Spain to the United Kingdom), for which reason it can and should be investigated here; and it was also in the United Kingdom, where the accounts were located and from which the quantities concerned were removed; and where there is no indication that an investigation is being carried out; and also in the United States, where the orders originated for the bank operations which provided a safe haven for the balances which were moved, and where accounts in the name of Augusto Pinochet Ugarte were opened and closed; and also in the Bahamas, where those responsible for Riggs Bank helped Augusto Pinochet to create two fictitious offshore companies so that they would appear as the nominal holders of his bank accounts and those of his family; and, finally, in Chile where the money was handed over to Augusto Pinochet (1.9 million dollars in cashier cheques between the 18<sup>th</sup> August 2000 and the 8<sup>th</sup> April 2002).

**SECOND.-** As regards the crime of money laundering, it would appear, judging from the information provided in the U.S. Senate report and the sums involved, that the laundering process must have begun several years before these proceedings were initiated in July 1996, particularly if one takes into account the date on which the financial instruments in the Bahamas were constituted (1996). That is, it is probable that

a depreciation of assets took place, and this should be investigated and the investigations should be extended over the period in which he held the highest responsibilities in the State from which the imputations made against him in these Proceedings are derived.

This continuity in the activity (initiated when such conduct was not punishable – that is before 1995, the year in which Article 301 of the Penal Code was introduced) was carried out until the year 2002, at least, and is responsible for the fact that linked economic-financial transactions were undertaken by Augusto Pinochet Ugarte, apparently helped by, amongst others, those persons holding responsibility in Riggs Bank, thereby constituting the criminal act referred to, whose investigation – for the same reasons cited in the case of concealment of assets - appertains to this Court.

**THIRD.-** The jurisdiction of this judicial body having been established, the Conventions regulating judicial assistance with Chile and the United States should be applied.

In the first case it should be established whether at present there are proceedings under way in Chile against Augusto Pinochet for the crimes of concealment of assets and money laundering. If the answer is affirmative, Article 42 of the Bilateral Convention governing Extradition and Judicial Assistance, published in the Official Gazette of 10<sup>th</sup> January 1995, will be applicable, in accordance with which “any complaint directed by one of the contracting parties whose objective is to begin proceedings in the courts of the other party” will be transmitted by diplomatic or consular channels.

If and once it is established that no such proceedings are under way, in that case again a complaint, describing the facts, will be filed, requesting compliance with Article 42.2 of the Convention (notifying the action taken on the complaint and providing a copy of the decision).

In the case of the United States, the same applies in respect of those persons, holding responsibilities in Riggs Bank and being nationals of that country, in which part of the allegedly criminal activity was carried out; for that reason the complaint will be filed for the purposes of criminal prosecution, in any case in accordance with Article 19.1 of the Convention on Mutual Judicial Assistance on penal matters between the Kingdom of Spain and the United States of America, in force as from 30<sup>th</sup> June 1993 and in accordance with which “either one of the contracting States may request of the appropriate authorities of the other contracting State that criminal proceedings be initiated provided that both States have jurisdiction to investigate or carry out judicial proceedings...”

**FOURTH.-** In the documents related to the enlargement of the criminal complaint dated 19<sup>th</sup> July 2004, a number of decisions are requested of a penal and civil nature, to which full replies are required as provided for in Articles 13, 311, 589 and subsequent Articles of the Criminal Proceeding Law, based on the writs related to the adoption of preventive measures of 19.10.98 and 10.12.98 and the indictment writ of this last date. In this regard there is an obligation to carry out the actions requested, transmitting appropriate communications; also adopting such cautionary measures as are necessary to ensure the payment of indemnities to those who are entitled to them, and which are derived not from the concealment of assets but from those preventive

measures imposed in 1998, and evaded by some of those persons whose imputation is requested, and who must answer this charge in civil terms in that they were accomplices of necessity in the disappearance of the funds with which some part of the indemnities which, in justice, are due, could have been paid.

As regards the penal imputation, the same action should be taken, for the same reasons and arguments, against Don Oscar Custodio Aitken Lavanchy, in the guise of accomplice, who, according to a document dated 6<sup>th</sup> September 2004, helped Augusto Pinochet Ugarte to create a shell company Abanda Limited in 1999 domiciled in the British Virgin Islands to safeguard the assets which this Court had agreed to distrain.

**FIFTH.-** In accordance with Articles 757 and 726.6 of the Criminal Proceeding Laws there is an obligation to accede to the request that a separate proceeding should be created in a form to be determined.

In addition to what has been said and taking into account the articles cited and also those of more general application

#### **RESOLVE:**

1. To enlarge the criminal complaint presented by the barister Mr. Juan Miguel Sánchez Masa, representing the President Allende Foundation, who is exercising the actio popularis, and also by Doña Josefina Llidó Mengual, Doña María Alsina Bustos, and Doña Laura González-Vera and the other parties who exercise the private prosecution, for the concealment of assets and money laundering against:

1. - Augusto Pinochet Ugarte, Chilean citizen
2. - Lucia Hiriart Rodríguez, Chilean citizen
3. – Joseph L. Allbritton, citizen of the United States of America
4. – Robert L. Allbritton, citizen of the United States of America
5. – Steven B.P. Pheiffer, citizen of the United States of America
6. - Carol Thompson, citizen of the United States of America
7. - Mr. Ashley Lee, citizen of the United States of America
8. - Fernando Baqueiro
9. - Raymond Lund
10. - Oscar Custodio Aitken Lavanchy, Chilean citizen.

2. To present a complaint, describing the facts in relation to each of these persons, to the respective jurisdictions of Chile and the United States, in accordance with the nationality and the place in which the allegedly criminal action was carried out, requiring of the complainant that he specify the nationalities and locations of all the newly accused persons at the time of the events.

3. To make known this decision and such additional facts as are necessary by appropriate diplomatic channels.

4. To request of the specified judicial Authorities that they inform this Court of action taken in relation to this complaint; in the meantime proceedings will continue here against those persons

5. To declare the subsidiary civil responsibility of Riggs Bank in the amount of 10.266.000 US dollars (10.300.000 euros), and also of the other persons who were involved in the withdrawal of the concealed assets.

6. To undertake the following actions:

A) to direct a judicial instruction to the Bank of Spain requiring that they inform this Court of any bank account of which they could have knowledge whose holder is or represents, or has been or has represented: Augusto Pinochet Ugarte; Ashburton Company Ltd. or Althorp Investment Co. Ltd.

B) to send Letters Rogatory:

1. To the Attorney General of the United States (Director, Office of International Affairs, Criminal Division, US Department of Justice, Washington DC 20530) in order that:

- a. he make available for this case all the documents and reports in the possession of the Permanent Sub-Committee On Investigations of the Committee on Governmental Affairs of the U.S. Senate and in the possession of the U.S. Federal Bank regulators, relative to accounts and assets whose proprietor is Augusto Pinochet Ugarte, directly or through the members of his family cited in "Fact, Second", or through companies under his control, in particular Ashburton Company Ltd. and Althorp Investment Co. Ltd.
- b. he impose embargos, blockages and deposits of all the balances held in insurance policies, insurance contracts of any kind, securities, promissory notes, rights and credits of every kind, including bank accounts and/or deposits, investment funds, certificates of deposit which Augusto Pinochet Ugarte may possess in the United States, directly or through third parties and members of his family;
- c. he authorise this Court to take statements from the managers and employees of Riggs Bank Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer and Carol Thompson;
- d. he impose a preventive embargo on the assets of the accused Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer and Carol Thompson, and of Riggs Bank N.A. of Washington D.C. and Riggs National Corporation – as having subsidiary civil responsibility - until payment of the sum determined by the Court as a surety.

For the purposes of taking declarations (item c), the assistance of the judicial commission and the parties involved is requested.

As regards the embargo requested in item d), this will be for the sum specified as surety and will be in accordance with the bilateral Convention referred to in this declaration.

2. To the authorities of the United Kingdom in order that:

- they make available to this Court all the information in their possession about the accounts, open or closed, in Riggs Bank Europe Ltd., with head office in London, in which Augusto Pinochet Ugarte appears as proprietor, directly or through the members of his family cited in "Facts, Second", or of companies under his control, in particular Ashburton Company Ltd. and Althorp Investment Co. Ltd.;
- they impose embargos, blockages and deposits of all the balances held in insurance policies, insurance contracts of any kind, securities, promissory notes, rights and credits of every kind, including bank accounts and/or deposits, investment funds, certificates of deposit which Augusto Pinochet Ugarte may possess in the United Kingdom, directly or through third parties and members of his family;

3. To the authorities of the Bahamas in order that:

- they make available to this Court all the information in their possession about the accounts, open or closed, in Riggs Bank Europe Ltd., with head office in London, in which Augusto Pinochet Ugarte appears as proprietor, directly or through the members of his family cited in "Facts, Second", or of companies under his control, in particular Ashburton Company Ltd. and Althorp Investment Co. Ltd, Riggs Bank & Trust Company (Bahamas) Ltd., now Riggs Bank in the Bahamas.;
- they impose embargos, blockages and deposits of all the balances held in insurance policies, insurance contracts of any kind, securities, promissory notes, rights and credits of every kind, including bank accounts and/or deposits, investment funds, certificates of deposit which Augusto Pinochet Ugarte may possess in the Bahamas, directly or through third parties and members of his family;

7. To carry out the actions requested in the document dated 2<sup>nd</sup> September 2004, consisting of:

- A) Constitute separate proceedings to carry forward the matters related to the present crimes of concealment of assets and money laundering which will begin with affidavit from the writs of 19-10-1998 and 10-12-1998, together with this resolution and all the documents presented which have been cited within it.
- B) Make known this resolution, providing a copy of the criminal complaint, to the accused cited in the "Resolve" part of this Resolution by means of consular channels in the case of those who have Chilean nationality and by diplomatic channels in the case of those who reside in the United States, together with the complaint presented to those authorities as referred to in point 1 of this "Resolve" section.

8. To carry out the actions referred to in point IX (page 20) of the document dated 2<sup>nd</sup> September 2004.

- A) Order that the HSBC Bank and the Banco de Santander, whose address, in both cases, is Plaza de Canalejas, N° 1, Madrid 28014, inform this Court of any bank account of which that Bank has knowledge in any of the branches of the Banco de Santander in Spain, Chile or any other country, even if such accounts have been closed, whose holder is or represents, or was and represented: Augusto Pinochet Ugarte and/or A. Ugarte; Ashburton Company Limited; Althorp Investment Company Ltd.; Belview International; Belview Inc.; Belview S.A., subsidiary of Belview Inc; the spouse of that person, Lucia HIRIART RODRIGUEZ and/or L.Hiriart; and his sons, daughters and sons-in-law, Ines Lucia Pinochet Hiriart, married to Julio Ponce Lerou, Augusto Osvaldo Pinochet Hiriart, Maria Veronica Pinochet Hiriart Pinochet Hiriart, married to Hernán García Barzelato, Marco Antonio Pinochet Hiriart, Jacqueline Marie Pinochet Hiriart, married to Iván Noguera.
- B) Repeat the Letters Rogatory which were presented before, as part of the present case, to the United States of America, United Kingdom, Canada and Bermuda.
- C) Send Letters Rogatory to Gibraltar, Channel Islands, Bahamas, Bermuda, Cayman, Virgin Islands, Holland and Dutch Antilles for the alleged crimes of money laundering, concealment of assets, terrorism, genocide, torture, specifying within the proceedings the facts revealed by the report of the Senate of the United States of America dated 15.7.2004, the acts of terrorism carried out in Buenos Aires in September 1974 (assassination of General Prats and his wife Sofia Cuthbert); the attack in Rome in September 1975 against Don Bernardo Leighton and his wife, Doña Anita Fresno; the assassination in Washington D.C. in September 1976 of Don Orlando Letelier and Mrs. Ron Moffit, the continuous character of the crimes, the total figures of deaths, forced-disappearances and of the tortured cited in the Indictment of 10<sup>th</sup> December 1998, always for the purpose of clarifying the source or destiny of the funds in Riggs Bank, in order that:
- they make available to this Court all the information which they possess regarding the accounts, open or closed, whose holder is shown as Augusto Pinochet Ugarte, and/or A Ugarte, directly or through the members of his family who have been cited above or through companies controlled by him, in particular under the names of Ashburton Company Ltd., Althorp Investment Co. Ltd.; Belview International; Belview Inc.; Belview S.A, subsidiary of Belview Inc.;
  - they order the embargo, blockage and deposit of all balances held in insurance policies, insurance contracts of any kind, securities, promissory notes, rights and credits of every kind, including bank accounts and/or deposits, investment funds, certificates of deposit, shares, stocks, certificates and any other financial asset which Augusto Pinochet Ugarte may possess directly or through third parties and members of his family and/or Ashburton Company Ltd., Althorp Investment Co. Ltd., Belview International; Belview Inc.; Belview S.A., subsidiary of Belview Inc.;
  - they identify the origin and destination of any funds, should they locate any accounts, open or closed, or financial assets, even if such assets have been

cancelled, making available supporting documentation regarding the means of payment used for each of the movements.

9. To refuse the request for action referred to in point IX B) in the form proposed, and the purpose of this request should be specified.

10. To carry out the actions requested in the document dated 6.09.2004 in relation to Abanda Limited.

11. To send international Letters Rogatory to the judicial authorities of Chile for the following purposes:

- communicate to the Judicial Authorities of Chile that the assets identified as the property of Augusto Pinochet Ugarte, in his name or that of his family or third parties, have been embargoed in accordance with the writ dated 19<sup>th</sup> October 1998 in Summary Proceedings 19/97, Separate Proceedings, a copy of which is attached,
- agree to request that the judicial authorities of Chile make available to this Court the information which they possess about the identity of those assets, in any country, arising from the proceedings which are being carried out by the Magistrate (Ministro) Don Sergio Muñoz, of the Court of Appeals of Santiago de Chile;
- request of the judicial authorities of Chile that, in relation to the responsibilities originating from the crime, they impose an embargo on those assets which, being on Chilean territory, may have been identified in the proceedings being carried out by the Magistrate S. Sergio Muñoz, of the Santiago de Chile Court of Appeals, and put them at the disposal of this Court; all of this on the supposition that no proceedings of similar scope to these are being carried out in that country, to which Authorities the said facts are also denounced (point 2)

This is what has been agreed, ordered and signed by DON BALTASAR GARZÓN REAL, MAGISTRATE-JUDGE OF THE CENTRAL INVESTIGATIVE COURT NUMBER FIVE, I certify

PROCEEDINGS: What has been agreed to will be complied with immediately, to which I certify.