

**ADMINISTRATION OF JUSTICE
INVESTIGATING COURT NO. 5
MADRID**

General Identification Number: 28079 27 2 1996 0007036
78300

**PRELIMINARY INVESTIGATION ABBREVIATED PROCEEDING
40/2005 c**

WRIT

In MADRID, February 25, 2005;

FACTS

ONE. On September 16, 2004, application was granted for expansion of the criminal complaint for the alleged crime of concealment of assets and money laundering against Joseph L. Allbritton, Robert L. Allbritton, Steven B. P. Pfeiffer, Carol Thompson, Mr. Ashley Lee, Fernando Baqueiro and Raymond Lund, among others, in which the facts were reported pertaining to each of these persons to the respective jurisdictions of Chile and the United States, according to the nationality and the location in which they carried out their alleged criminal activity, with the plaintiff being required to specify the nationalities and destinations on the date of the facts of all the new defendants.

Likewise, the judicial authorities called upon were asked to report the status of the complaint to this Court, and, in the meantime, the proceedings would be continued against them here; to declare the subsidiary liability of Riggs Bank to be the amount of USD 10,266,000 (10,300,000 euros), as well as of the other people who have contributed to the withdrawal of the concealed assets; to dispatch the following letters rogatory:

1. To the Attorney General of the United States (Director, Office of International Affairs, Criminal Division, US Department of Justice, Washington D.C. 20530) for them to contribute to this cause all documents and reports that are made available by the Permanent Subcommittee on Investigations of the US Senate Governmental Affairs Committee, as well as by the US Federal Bank regulators, pertaining to the bank accounts and assets that appear to be owned by Augusto Pinochet Ugarte, directly or through the members of his family specified in background point number two, or of companies under his control, specifically Ashburton Company Ltd. and Althorp Investment Co., Ltd.; to issue an order to levy an attachment, block and deposit of all balances that may be linked to all insurance policies, insurance contracts of any kind, negotiable instruments, promissory notes, rights and credits of any kind, including bank accounts and/or deposits, investment funds and certificates of deposit that Augusto Pinochet Ugarte, directly or through third parties and the members of his family, may have in the United States; to authorize this Court to take statements from the directors and employees of Riggs Bank, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer and Carol Thompson; to issue an order to levy

a preventive attachment of the assets of the defendants Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer and Carol Thompson, as well as of the subsidiary responsible party – Riggs Bank N.A. of Washington D.C. and Riggs National Corporation – until remittance of the amount established by the Court as a bond.

TWO. On January 31, 2005, a Writ was issued by means of which it was decided that a preliminary investigation would be initiated as breakdown from the file of Case 19/97, in that which pertains to the crimes of concealment of assets and money laundering.

THREE. On February 1, 2005, the public prosecutor filed a pleading that petitions the Court, based on the agreement from January 27, 2005:

“to admit as a provisional estimate the amount of €1,445,530,116 for the full civil liability of Augusto Pinochet Ugarte for the crimes of genocide, terrorism and torture of which he is indicted;

to acknowledge notice of the transactional agreement settling claims of civil liability-reached in Washington, D.C. between, on the one hand, the popular prosecution and private prosecution and, on the other hand, Riggs National Corporation, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund by virtue of which they undertake 1) to deliver to the popular prosecution and private prosecution, for submission to these proceedings, the documentary evidence of the movements in the accounts held by the indicted Augusto Pinochet, 2) to deliver to the Spanish Foundation “Presidente Allende” a settlement amount allowing it to distribute the benefit of eight million dollars (US \$ 8,000,000) in full to the victims represented by the popular prosecution and private prosecution and in addition to account for the payment for expenses and court costs;

consequently, to hold as formulated the desistment of the complaint and the criminal claim for alleged violation of Articles 257, 258 and 301 of the Criminal Code and waiver of the civil claim exclusively in respect of Riggs National Corporation, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund, on the one hand, and, on the other hand, Joseph L. Allbritton, Robert L. Allbritton and their immediate family members (including Barbara, the wife of the former);

to hold as petitioned, in accordance with the provisions of Section 637.2 of the Rules of Criminal Law Procedure, the non-suit final resolution and final shelving of these Preliminary Investigation exclusively in respect of Riggs National Corporation, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund and any other past and present Riggs National Corporation employee, agent, representative, director, officer, attorney, successor or assign, on the one hand, and, on the other hand, also in respect of Joseph L. Allbritton, Robert L. Allbritton and their immediate family members (including Barbara, the wife of the former) and their past or present affiliates, employees, agents, representatives, attorneys, successors or assigns;

to hold as petitioned the cancellation of all the cautionary measures adopted in the Writ of September 16, 2004 exclusively in respect of the same aforementioned individuals, in particular

the attachment of their assets and that portion of the Letters Rogatory requesting commencement of legal actions, information or testimony from Riggs National Corporation, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund and from any other past and present employee, agent, representative, director, officer, attorney, successor or assign of Riggs National Corporation, while maintaining the Letters Rogatory to hear the testimony of Fernando Baqueiro and Carol Thompson as witnesses, in the event that the Court considers it appropriate to hear that testimony; and I do hereby so petition the Court to grant.”

FOUR. A copy was submitted to the Office of the Public Prosecutor, which reported that:

“There is no objection to the declaration of the dismissal without prejudice, in accordance with the provisions of Article 641.2 of the Criminal Procedure Act, vis-à-vis RIGGS NATIONAL CORPORATION, STEVE B. PFEIFER, R. ASHLEY LEE, CAROL THOMPSON, FERNANDO BAQUEIRO, RAYMOND LUN, JOSEPH L. ALLBRITTON, ROBERT L. ALLBRITTON AND BARBARA L. ALLBRITTON.

The provisional quantification of the damages incurred in the facts that are the subject of Case 19/97 of this Investigating Court is considered to be appropriate, as petitioned by the plaintiffs.

There is no objection to the inclusion of the addenda filed with the pleading of the plaintiffs on 2/1/05 into this preliminary investigation.

The creation of a pension fund in the manner and for the purpose provided for in point ten of the aforementioned pleading is considered to be legal.”

LEGAL ARGUMENTS

ONE. The documentation provided shows that although the directors of Riggs Bank initially appeared to have been possible necessary collaborators for the alleged crimes of concealment of assets and money laundering, following the orders of the account holders (Mr. Pinochet Ugarte and his wife Lucía Hiriart), subsequent events revealed lack of criminal intent to commit the crimes specified on the part of the banking institution and its representatives. However, their actions can be placed instead in the scope of violation of banking regulations and the laws that regulate these types of activities, which have been sanctioned by the American authorities after the exhaustive investigation by the Senate in that country. It is thus recorded in the guilty plea attached to the “plea agreement” dated January 27, 2005, between Riggs Bank and the United States Department of Justice, which was submitted for the approval of the Federal Judge of the District of Colombia.

This subsequent action of the Bank has been complemented by open cooperation with the justice administration, facilitating the judicial activity and the discovery of the assets of Augusto Pinochet, who is indicted in Case 19/97 on which this Proceeding is based, and of his wife, against whom the criminal complaint is also directed, as well as making available to the Court all

the assets that these persons may have in the Bank, and recognizing the possible liability to indemnify in favor of the victims via remittance of the approved amount, which coincides with the amount provided by the account holders, after they learned of the judicial attachment of the assets.

This latter development of events has shown that although the initial action could include criminal content by the bank and its employees, at this time, in light of the investigation carried out, this does not appear to be the case, wherefore in this case the question would be focused exclusively in the civil scope, which has also been resolved satisfactorily, given that the bank, pursuant to the “plea agreement” and the “guilty plea”, has recognized this liability and has paid this to the satisfaction of the victims, in addition to being sanctioned \$16,000,000. To this must be added the fact that it has agreed to cooperate subsequently with the courts to facilitate the discovery of other accounts and amounts that could have been involved in similar operations to conceal assets of the defendant subject to judicial attachment since October 19, 1998 and December 10, 1998.

TWO. The dismissal, once the lack of intent to commit the act is made a matter of record, determines that this, for the representatives of the bank, is definitive Non-Suite Final Resolution, in accordance with Article 637.3 of the Criminal Procedure Act, without prejudice to continuing the proceedings for the rest of the defendants. Furthermore, and after making a matter of record the existence of the acknowledgement of liability in the banking irregularities and after having their behavior sanctioned (\$16,000,000), it is not appropriate to bring a similar action against the same persons and the banking institution, so as not to violate the *ne bis in idem* principle.

THREE. Given the acknowledgement of civil liability, it is necessary to determine how to apply the amount offered and that it must be allocated for remittance to the victims in the manner that will be determined. In this regard, the proposal of attribution that the private and public prosecutors make in point seven of their pleading dated February 1, 2005, which was approved by the Office of the Public Prosecutor, appears to be adequate, based on the money allocated. There is no obstacle to the application of Article 115 of the Criminal Procedure Act, or to the application of the Law on Solidarity with the Victims of Terrorism, given that the principal defendant (Mr. Pinochet Ugarte) is indicted for that crime, among others.

Likewise, and as set forth in point eight, the quantification of victims appears to be adequate (3,355 persons killed or missing, with 65 surviving victims exercising the private prosecution; and 27,255 victims of torture, established by the National Commission on Political Imprisonment and Torture appointed by the Chilean government, in its report from November of 2004). Approximately 3,000 more people could have to be added to all of this, who could not appear before the aforementioned commission on time.

In summary, the total quantification of the liability of Augusto Pinochet is considered to be adequate at 1,445,530,116 euros (one billion four hundred forty-five million five hundred thirty thousand one hundred sixteen euros).

FOUR. With regard to the proposal formulated by the prosecutor in point ten of his pleading dated February 1, 2005, it is considered to be acceptable and adequate for the victims to receive the amount that corresponds to them with no unnecessary depreciation of this amount. These operations shall be submitted for judicial approval of their general guidelines.

Therefore, and after reviewing the cited articles and other provisions of general and pertinent application,

I ORDER

1. The Non-Suit Final Resolution of the cause for the crimes of Concealment of Assets and Money Laundering against Riggs National Corporation, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro, Raymond Lund, and any other past and present Riggs National Corporation employee, agent, representative, director, officer, attorney, successor or assign, on the one hand, and, on the other hand, also in respect of Joseph L. Allbritton, Robert L. Allbritton and their immediate family members (including Barbara, the wife of the former) and their past or present affiliates, employees, agents, representatives, attorneys, successors or assigns;

2. The acknowledgement of the **desistment of the complaint** and the criminal claim by the private and popular prosecutors and **waiver of the civil claim** in respect of Riggs National Corporation, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund, on the one hand, and, on the other hand, Joseph L. Allbritton, Robert L. Allbritton and their immediate family members (including Barbara, the wife of the former);

3. The **quantification** of the civil liability of Augusto Pinochet Ugarte pursuant to the facts for which he was indicted on 12/10/1998, in Case 19/1997, at **1,445,530,116 euros**.

4. to acknowledge notice of the agreement on civil liability between the Riggs National Corporation, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund by virtue of which they undertake 1) to deliver to the popular prosecution and private prosecution, for submission to these proceedings, the documentary evidence of the movements in the accounts held by the indicted Augusto Pinochet, 2) to deliver to the Spanish Foundation "Presidente Allende" an amount allowing it to distribute the benefit of eight million dollars (US \$ 8,000,000) in full to the victims represented by the popular prosecution and private prosecution and in addition to account for the payment for expenses and court costs; consequently, to knowledge as formulated the desistment of the complaint and the criminal claim for alleged violation of Articles 257, 258 and 301 of the Criminal Code and waiver of the civil claim exclusively in respect of Riggs National Corporation, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund, on the one hand, and, on the other hand, Joseph L. Allbritton, Robert L. Allbritton and their immediate family members (including Barbara, the wife of the former);

- **to cancel** all the cautionary measures adopted in the Writ of September 16, 2004, which is amended in this regard, in respect of the same aforementioned individuals. In particular the attachment of their assets, and the Letters Rogatory requesting from the competent American

authorities commencement of legal actions, information or testimony from Riggs National Corporation, Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer, Carol Thompson, R. Ashley Lee, Fernando Baqueiro and Raymond Lund and from any other past and present employee, agent, representative, director, officer, attorney, successor or assign of Riggs National Corporation, while maintaining the Letters Rogatory to hear the testimony of Fernando Baqueiro and Carol Thompson as witnesses

It is so declared, ordered and signed by BALTASAR GARZON REAL, MAGISTRATE-JUDGE of Investigating Court No. 5 of MADRID. I certify the foregoing.

DILIGENCE. What is ordered is promptly executed. I certify the foregoing.