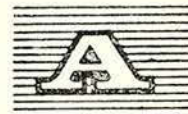


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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Letter dated 30 September 1976 from the Permanent Representative of Chile to the United Nations addressed to the Secretary-General

I have the honour to bring to your attention the following Public Declaration made on 11 October 1976 by the Supreme Court of Justice of Chile:

"At Santiago, on 11 October 1976, the Supreme Court met in plenary session, presided over by José María Eyzaguirre and with Judges Ortiz, Bórquez, Maldonado, Ramírez, Rivas, Correa, Erbeta, Ulloa, Aburto, Zuñiga and Meersohn attending, and took note of Communication No. 866, of today's date, from the Minister of Justice, transmitting a communication from the Minister for Foreign Affairs, which reproduced some paragraphs of the report of the Working Group on the Situation of Human Rights in Chile established by the United Nations Commission on Human Rights and, in view of the falsehood of some allegations concerning the Judicature in our country, particularly this Court, and since those allegations revealed a complete lack of knowledge of Chilean legislation and judicial practice, agreed to formulate the following public declaration:

(a) It is asserted, for interested motives, that decree-law 527 included among the special powers vested in the President of the Government Junta 'that of supervising the conduct of judges and assistant judicial officers of the judicature'. Decree-law 527, of 17 June 1974, laid down that 'executive power is exercised by the President of the Government Junta who, with the title of President of the Republic of Chile, administers the State and is the Supreme Head of the Nation, with the powers, functions and prerogatives granted to him by this statute'. Article 10, paragraph 2, establishes that the special functions of the President are: '4. To supervise the professional conduct of Judges and other employees of the judicature and, to that end, to request the Supreme Court, if appropriate, to declare that they have been guilty of misconduct ...'. This text is exactly the same as that of



article 72, paragraph 4, of the Political Constitution of the State in force in Chile since 1925 and is similar to article 82, paragraph 3, of the Political Constitution of 1833. For that reason, it is not correct to state that decree-law 527 of 1974 granted the President of the Republic a new power, since that same power has existed in Chile since 1833. In any event, it cannot be asserted, without distorting the truth, that the Head of State is authorized to remove judges and assistant judicial officers from their posts, since that power is vested solely in the Supreme Court. The independence of the judicature is therefore maintained in all its integrity, since only its highest body decides whether it is appropriate to remove a judge or state that his performance has been unsatisfactory. It is also incorrect to state that by virtue of this power vested in the President of the Republic, which, as has been said, dates from 1833, 24 judges have been removed from their posts, since the removals actually took place as a result of the annual review process which the Supreme Court has carried out each January by legal mandate for many years without intervention by the Executive or because the Supreme Tribunal had declared during the year that the judges had been guilty of misconduct, in accordance with article 45 of the Political Constitution of 1925. It should be added that, in the case of some judges, the Executive has made representations to the Supreme Court, as can be done by any citizen of the Republic, regarding their misconduct and the Tribunal, after carrying out the relevant investigation, has retained them in their positions. Furthermore, it is necessary to point out that the same decree-law 527 cited in the report provides in article 3: 'The judicature is constituted and exercises its functions in the manner and with the independence and powers laid down in the Political Constitution of the State and the laws of the Republic'. Those laws include article 12 of the Organic Code of Tribunals, which has been in force in Chile for more than a century and provides: 'The judicature shall be independent of any other authority in the exercise of its functions'.

(b) It is absolutely false to state that since 11 September the attitude of the judicature in general, and the Supreme Court in particular has changed with respect to the arrests which may be made by the Executive while the state of siege exists. The attitude and judicial practice of the Tribunals of Justice concerning the propriety and legality of arrests made by the Executive by virtue of the state of siege have always been the same, in accordance with the letter of the Political Constitution, this being an exclusive power of the President of the Republic which cannot be reviewed by the Tribunals since, if they were to proceed differently, they would be violating article 4 of the same Constitution and article 4 of the Organic Code of Tribunals. Nevertheless, when ruling on the appeals for amparo submitted by persons affected by that measure, the Tribunals - and always the Supreme Court - have ensured strict compliance with the constitutional and legal rules which govern the loss of liberty of those persons, resolving the cases according to law. Similarly, it is incorrect to state that the Ministry of the Interior may take any length of time to submit information on an appeal for amparo, because if the report is not submitted within a reasonable time, the appropriate Tribunal requires the said Ministry to

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send the report in the shortest possible time and the Ministry complies with that requirement. For that reason, there is no truth in the statement in the report concerning the pusillanimity of the judiciary in Chile.

(c) Vague and hence unfounded statements have been made about slowness in processing appeals for amparo; but such a situation could not occur, because the appeals have been processed in accordance with the law and, furthermore, the Supreme Court, using its inalienable powers, which were not impeded by any authority, has insisted that they be processed properly.

(d) It is absolutely false and obviously ill-intentioned to assert, as was done by Judge John Carro, Acting Judge of the Supreme Court of the State of New York, that a Judge who had conducted a trial of 20 persons and acquitted four of them had been incarcerated the following day because of that action. This Supreme Court of Justice can affirm, most emphatically, that no member of the judiciary in Chile has been incarcerated for the judgements he has handed down and, on the contrary, all decisions handed down by the Regular Tribunals of Justice, whether or not favourable to the Executive, have been complied with and carried out by the latter. Those who are familiar with the tradition of the people of Chile and the honesty and integrity of the Chileans who administer justice, need no explanations to counter this atrocious slander.

(e) The same Judge Carro mentioned above has stated that the President of the Tribunal, Mr. Eyzaguirre, acknowledged that there was no independent judiciary in Chile. That is a complete falsehood, since Mr. Eyzaguirre has never made any such assertion. The statement made by Mr. Eyzaguirre to Judge Carro has been distorted, in that the former is said to have acknowledged the existence of torture, when what Mr. Eyzaguirre actually said was that when the existence of torture was in fact verified, its perpetrators had been sentenced by the Military Tribunals, without intervention by the regular courts."

I should be grateful if you would have this note circulated as a General Assembly document under agenda item 12.

(Signed) Ismael HUERTA  
Vice Admiral  
Ambassador, Permanent Representative

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