

FORMER PRESIDENT JUAN MARIA BORDABERRY IS CONDEMNED TO THIRTY YEARS OF PRISION AND 15 YEARS OF PRECAUTIONARY DETENTION FOR THE OFFENSES OF "CRIMES AGAINST THE CONSTITUTION," TWO "POLITICAL HOMICIDES" AND THE "FORCED DISAPPEARANCE" OF NINE CITIZENS

By Walter de León

BACKGROUND:

1. On November 19, 2002, with the collected signatures of over 2,000 citizens, an extensive complaint against former president Juan Maria Bordaberry was presented in the Supreme Court of Justice of the Oriental Republic of Uruguay for the commission of multiple crimes in the execution of the June 1973 coup. The complaint outlined the human rights and constitutional violations committed in Uruguay as well as in other Southern Cone countries.
2. In the complaint, Bordaberry was accused of being the mastermind of the offense of "Crimes against the Constitution" and "Revelation of Political or Military Secrets." These crimes have a maximum sentence of thirty years and are in the Penal Code chapter entitled "Crimes against the Homeland." Incorporated in the complaint was a list of political homicides which detailed the dates and circumstances of the crimes committed between 06/27/1973 – 06/12/1976 and which named Bordaberry as the co-author of not only those crimes but of others discovered in the judicial investigation. The complaint also accused him of the crime of "Forced Disappearance" and detailed the list of victim names, dates of disappearance, witnesses and circumstances surrounding the disappearances. All of the aforementioned charges were crimes against humanity as defined by Uruguayan law and by international treaties approved by Uruguay.

Bordaberry was accused of participating in the creation, implementation and execution of Operation Condor in coordination with other military regimes in the Southern Cone region. An analysis of Uruguay's foreign debt found that it had increased from 564.5 million dollars when Bordaberry took office to 4.9 billion dollars at the end of his regime. There was neither an audit nor an explication for the increased spending. Uruguay's foreign debt during Bordaberry's regime had increased more than any other country in the region as evidenced by the fact that the other countries had only a five-fold increase in their foreign debt while Uruguay had a ten-fold increase. These and other crimes were presented in a complaint in 2002. An abundance of evidence buttressed the victims' case, including the testimony and documentary evidence from Paraguay's "Archivo del Terror" presented by Dr. Martín Almada and the testimony and documentary evidence from the archives of the U.S. State Department presented by Carlos Osorio, an expert on the declassification of documents from U.S. intelligence agencies. The State Department documents implicated both Bordaberry in Operation Condor and the Uruguayan military regime in crimes committed by other regimes in the Southern Cone.

PROCEDURE:

1. On August 15, 2003, the Supreme Court of Justice decided that Bordaberry should be tried as a regular citizen (Art. 8 of the Constitution).
2. In December 2004, Judge Fanny Canessa dismissed the case on *res judicata* grounds and ordered that the case be archived.
3. On February 1, 2005, the Prosecutor, Dr. Ana Tellechea, appealed Judge Canessa's order.
4. On March 13, 2006, the Tribunal of Appeals in the "Penal de 3^o" overturned Judge Canessa's decision and ordered that the investigation be continued. The file was turned over to Judge Graciela Gatti and the gathering of witness testimony and other forms of evidence resumed.
5. The evidence gathered included the report of the proceedings from the Parliamentary Commission which had investigated the disappeared between 1985 and 1987, testimony from family members of the disappeared, testimony from citizens who had suffered human rights violations, documentary evidence from the government, including a 1974 speech in which Bordaberry promised military subordinates that they would never be brought to justice for their acts supporting and helping the government. The aforementioned participation by Dr. Martin Almada and Carlos Osorio in 2006 also provided strong evidence.
6. At the request of Prosecutor Tellechea, Judge Graciela Gatti ordered the prosecution of Bordaberry for co-authoring ten "especially aggravated homicides" (carrying a sentence of between 15-30 years).
7. Bordaberry was charged with the homicides of the following persons: JOSE ARPINO VEGA, EDUARDO PEREZ SILVEIRA, LUIS EDUARDO GONZALEZ, JUAN MANUEL BRIEBA, FERNANDO MIRANDA PEREZ, CARLOS PABLO AREVALO ARISPE, JULIO GERARDO CORREA RODRIGUEZ, OTERMIN LAUREANO MONTES DE OCA DOMENECH, HORACIO GELOS BONILLA, UBAGESNER CHAVES SOSA.
8. The defense appealed Judge Gatti's decision and on the tenth of September, 2007, the Appellate Tribunal in the "Penal de 3^o turno" confirmed Gatti's decision to prosecute Bordaberry.
9. The case became immensely important due to the fact that the 2006 prosecution of Bordaberry and the prosecution of the other crimes in 2002 both fell under the jurisdiction of the judge who initially had the case - Judge Graciela Gatti. The investigation of the December 1974 "Fusilados de Soca" (HECTOR DANIEL BRUM, MARIA DE LOA ANGELES CORBO DE BRUM, GRACIELA MARTA ESTEFANELL, FLOREAL GARCIA, MIRTHA HERNANDEZ DE GARCIA) was also being investigated by this same court. Testimony in the case was provided by two survivors of the homicides, AMARAL GARCIA and JULIO ABREU, as well as family members and other witnesses.

The homicide of Hugo Leonardo De Los Santos Mendoza was also incorporated in this trial, amid new information from witnesses.

Given the information in the aforementioned description, as well as the diverse and complex issues raised in the case, the expectation was that Bordaberry would be charged with other crimes during the trial proceedings. This was Prosecutor Tellachea's position.

Since the acts committed during Bordaberry's regime, as well as the acts committed later up until the year 1985, were so numerous and horrific, it could be said that the case against Bordaberry was really a case against the dictatorship during the 06/27/1973 – 06/12/1976 time period. This was the reason why the trial became extremely important.

CASE STATUS:

On February 9, 2010, Judge Mariana Motta from at "Juzgado de Primera instancia en lo Penal de 7° turno" found Bordaberry guilty of being an author of the offense of "Crimes against the Constitution." He was also found guilty of nine forced disappearances and two political homicides. Bordaberry was sentenced to thirty years imprisonment and fifteen years of precautionary detention and "disqualification" for six years. He was also required to meet the costs of imprisonment. At the end of the sentence, the Judge granted him an automatic appeal before one of the Appellate Tribunals.

CONCLUSION:

1. Finding Bordaberry guilty of the offense of "Crime Against the Constitution," would make him the first de facto head of state in Latin America to be prosecuted and condemned for instigating a coup. Other heads of state had been condemned for kidnapping of children, economic crimes, etc. but not for violating the constitution and the rule of law.
2. For the first time in Uruguay's history, an individual was condemned for the offense of co-author of "Political Homicide." "Political Homicide" and "Forced Disappearance" were crimes incorporated into Uruguayan legislation in 2006 with law 18026, "Co-operation with the International Criminal Court," in the chapter, "Crimes against Humanity," and in Article 21, "Forced Disappearance." With Bordaberry's sentence, the Uruguayan judiciary recognized that Bordaberry committed "Crimes against Humanity."
3. With Bordaberry's sentence, the Judge recognized that all of the international human rights treaties and conventions had been integrated into Article 72 of the Uruguayan Constitution. International treaties protecting human rights now held constitutional importance in Uruguay.