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di Dennis Chavez de Paz pp. 81-103 articolo rivisto



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## SENTENCE CONDEMNING THE FORMER PRESIDENT OF PERU FOR VIOLATIONS OF HUMAN RIGHTS

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### Abstract

There is an empirical relationship between state and type of protection or violation of human rights a constitutional and democratic state of law there is a greater guarantee of protection of human rights than in an authoritarian and dictatorial state. This last situation is attributed to the ex President of Peru, Alberto Fujimori, who governed from 1990 to 2000; Having been sentenced by the Peruvian courts for human rights violations, to 25 years of imprisonment. It is the only case in Latin America where a former president is in prison for violation of Human Rights. This paper describes the socio-political conditions in which context human rights were violated; It analyses the factual and legal reasoning of the judges, contained in the sentence vs. ex-president Alberto Fujimori.

Key words: Human Rights, Authoritarian State, Latin America;

### Resumen

Existe una relación empírica entre tipo de Estado y la protección o violación de los Derechos Humanos. En un estado de derecho constitucional y democrático hay mayor garantía de protección de los Derechos Humanos, que en un estado autoritario y dictatorial. Esta última situación se atribuye al ex presidente del Perú, Alberto Fujimori, que gobernó de 1990 al año 2000; habiendo sido condenado por los tribunales peruanos, por violación de los derechos humanos, a una pena privativa de su libertad por 25 años. Es el único caso en América Latina que un ex presidente está en prisión por violación de los Derechos Humanos. En esta exposición, se describe las condiciones socio políticas, en cuyo contexto se violaron los derechos humanos; y, se analiza el razonamiento fáctico y jurídico de los jueces, contenidos en la sentencia que recayó en el ex presidente Alberto Fujimori.

Parole chiave: Derechos Humanos, Estado autoritario, América Latina.

Profesor Princial, Universidad Nacional Mayor de San Marcos, Lima.

Traduzione e revision di Kstja Lidsell

## **o. The socio-political context in which the violation of human rights occurred.**

### **Authoritarian and undemocratic government.**

President Alberto Fujimori came to power in 1990 through democratic elections, his term of office being 5 years. In 1992 through a coup, with the support of the military, he abolished the 1979 Constitution, in force at the time, and ruled through 2000. The government of former President Fujimori had the following characteristics: “No more separation of powers, all powers to the president”.

#### *o.1 Dissolution of Parliament*

With the coup of April 5, 1992, in March, then - President Alberto Fujimori, with the support of the military, abolished the existing 1979 Constitution and dissolved the parliament<sup>1</sup>.

The former president justified the dissolution of the National Parliament in a speech to the people, pointing out that the parliament sought to limit the exercise of government in its fight against terrorism and economic recovery of the country.

#### *o.2 Intervention on the judicial system*

A Governing Council was appointed with higher authority than that of the Supreme Court.

Other members, similar to the government of Fujimori, were appointed as members of the Constitutional Court

The constitutional function of this body is the designation of judges of all judicial instances. These functions were suspended.

#### *o.3 Establishment of mechanisms of control and repression*

The authoritarian and dictatorial state that the former President Fujimori built had a system of control and repression, violating human rights and other democratic freedoms. This system mainly comprised the Central Intelligence Central - the SIN.<sup>2</sup>

SIN was accused of spying on Fujimori's opponents, abducting and/or persecuting them

<sup>1</sup> Peruvian President Alberto Fujimori's decision to dissolve Peru's Congress and suspend the Constitution was severely condemned by presidents of several Latin American countries and by the United States itself. The US State Department announced last night that that country immediately suspended the delivery of all kinds of new aid to the Peruvian government By EFE-Reuter-AP-AFP. April 7, 1992 <http://www.eltiempo.com/archivo/documento/MAM-86848>.

<sup>2</sup> "The National Intelligence Service" Chapter V. Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (cumulative), of April 7, 2009 "SPECIAL OPERATIONS OF INTELLIGENCE. CHAPTER VIII". Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE.

#### *0.4 Establishment of operational groups*

Operational groups composed of military were established to torture, kill and ensure the disappearances of unwanted people. A command composed of military, known as the Colina Group<sup>3</sup>, was accused of mass murdering civilians.<sup>4</sup>

#### *0.5 Control of communication means*

The government took control of the media, especially the so – called "chicha daily" as well as of TV channels, bribing their owners to ensure that editorials and news were always pro-government.<sup>5</sup>

#### *0.6 Weakening of the political party system*

In the government of former President Fujimori, "Independent" candidates could run for president. These candidates did not necessarily form part of a political party. To be a candidate for president of the republic, it was enough to gather a certain number of signatures of citizens to support the candidacy.<sup>6</sup> In this way, a system was created where "political entrepreneurs" become "owners" of organisations that invest money in the collection of signatures to register as a political organisation with the National Office of Electoral Processes (ONPE), the body responsible for electoral processes. This process led to the "parties = company" concept.<sup>7</sup> One could sell or rent political organisations to run for the leadership of the Peruvian State. It de-naturalised the concept of a real political party, with an organisation at national level, with real leaders, with ideology and a government program.

#### *0.7 Weakening of trade associations, unions and professional organisations*

As part of the process of dismantling these associations, the organisations were regularised, in order to hinder the effectiveness of the organisations of workers and professionals; tackling the decisions of an authoritarian and undemocratic government, Military was put in place at universities to control teachers and students, e.g. in the National University of San Marcos (first American university dating back to 1551).

<sup>3</sup> The Colina Special Intelligence detachment consolidated its formation during the month of August of 1991 Chapter VII. The Colina Special Intelligence detachment: 1. Background. Initial approach. Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (cumulative), of April 7, 2009.

<sup>4</sup> The "Barrios Altos" case and the National University Enrique Guzman y Valle "La Cantuta". Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE.

<sup>5</sup> Thus the media were censored during Fujimori's coup in 1992: <http://gestion.pe/politica/asi-fueron-censurados-medios-prensa-durante-golpe-estado-92-2157751>

<sup>6</sup> Eduardo Bueno León, "The Fujimori phenomenon and the political crisis in Perú". <http://www.acuedi.org/ddata/56.pdf>.

<sup>7</sup> Miro Quesada, Francisco, "The party - company concept in politics". Diario El Comercio, Lima 2016.

### *0.8 New 1993 constitution to perpetuate power*

President Alberto Fujimori, established the "Government of Emergency and National Reconstruction" calling for a Constituent Assembly, where the government had a majority of votes, and its members were chosen through elections. The task was to draft a new constitution.

In 1993, the Constituent Assembly approved a new Constitution. This Constitution allowed the immediate re-election of the President of the Republic; after which some time needed to lapse in order to reapply for the position.<sup>8</sup> Alberto Fujimori was re-elected for a new five-year term that concluded in 2000; despite the constitution would not allow for re-election, he started a third term which was not completed<sup>9</sup>.

## **1. The social economical context, and the violence**

The authoritarian state of the government of former President Fujimori was established in a critical socio-economic context, with a lot violence by subversive movements

### *1.1 The social and economic conditions of the population*

Peru had just come out of a long period of military dictatorial government since the military coup in 1968. This regime ruled the country through 1980. In its first period, between 1968-1975, (Velasco Alvarado), profound reforms were made. By way of example, the elimination of the hacienda system, turning the haciendas in the rural areas into agricultural cooperatives owned by the workers.

<sup>8</sup> Art. 112. This article was modified by Law No. 27365 of 05-11-2000 with the following text: "The presidential term is five years, there is no immediate reelection. After another constitutional period, at least, the former president may re-apply, subject to the same conditions".

<sup>9</sup> "The accused was absent from the country with the authorization of the Congress-Legislative Resolution published on October 13, 2000, authorizing him to exercise the presidential function - he can travel abroad between October 16, 2000 and January 15, 2001, from 13 to 18 november 2000 in order to participate in the VIII Summit of leaders of the Forum of Economic Cooperation of the Asia Pacific APEC, that will take place in the Sultanate of Brunei Darussalam, And at the X Ibero-American Summit in Panama -tSupreme Resolution number 509-2000-PCM, published on November 14, 2000, commissioned by Office of the President of the Republic to Vice-President Ricardo Márquez Flores-. However, after participating in the APEC Summit he canceled his participation in Panama and unexpectedly went to Tokyo - Japan, from where on November 19 2000, via email resigned from the Presidency of the Republic. The Congress met in extraordinary session on November 29, 2000 and agreed to dismiss the resignation and declare both the permanent moral incapacity of Fujimori and the vacancy of the Presidency of the Republic, through Legislative Resolution number 009-2000-CR, of that date published on November 22. This information is consolidated in the sentence of Constitutional Court number 3760-2004-AA / TC, of February 18, 2005 "Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE.

An industrial reform was initiated which involved putting the blue collar workers in the board of companies. In addition, the military annulled the system of political parties and no elections to elect government officials were held for more than a decade.

The population in the country showed high rates of poverty reaching 70% of the population according to the academics.

### *1.2 The violence of the rebellious movements: terrorism*

The social situation of the country was critical and quite turbulent due to the action of the rebellious (subversive) movements with their terrorist actions when Fujimori took office. In this regard, the sentence pronounced vs. former President Fujimori states that (628°) the terrorist situation was very serious when Fujimori took office, especially in large cities and in particular in Lima, and a balance A very close picture of reality offers, in this regard, the Final Report of CVR847 and the explanations of the expert Degregori as well as — particularly and in a central way — the findings indicated in this Second Part, Chapter I "Aspects of the Criminal evidence of the sentence n. 849.<sup>10</sup>

#### *1.2.1 "Sendero Luminoso"*

In early 1980, a guerrilla movement started — a subversive Marxist - Maoist, with a Gonzalo imprint movement under the name of the "Luminous Path".<sup>11</sup> It begins its actions in the southern mountains of Peru, in the region of Ayacucho, one of the poorest of Peru. This movement managed to organise itself at national level. "Sendero Luminoso" sparked nationwide terror, and they had car bombs exploding in urban areas and they ran villages in the Andean regions to the ground.<sup>12</sup>

#### *1.2.2 Revolutionary Movement Tupac Amaru*

In 1985 another subversive Marxist movement was formed and the movement operated simultaneously with the "Luminous Path".

### *2.3 The Military*

The military fought these rebel groups with strength and indiscriminately in some areas, especially with the Andean population, where many innocent civilians were killed, including

<sup>10</sup> Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE; Chapter XV; item 628.

<sup>11</sup> There is a wealth of literature on this movement. See Commission of the Truth and Reconciliation. Final report.

<sup>12</sup> See Commission of the Truth and Reconciliation. Final report.

women and children. It is estimated that in the period ranging from 1980 to 2000 some 60,000 people have died by terrorist actions performed by rebels and military.

## **2. The violation of human rights: the conviction of former President Alberto Fujimori**

Former President Alberto Fujimori in the sentence that sentenced him to 25 years of imprisonment, was also found guilty for personally authorising a large number of murders, killings and kidnappings.<sup>13</sup>

### ***2.1 The facts that review President Fujimori's personal involvement***

#### ***2.1.1 The murders of "Barrios Altos" (Chapter IX of the Judgment)***

In an area of downtown Lima, known as "Barrios Altos," on November 3, 1991, there was a mass murder of citizens holding a social gathering ( "pollada"), including women and children. These killings were executed by the "Colina" group, which had the approval of the high command of the Army and thus former president Fujimori.

On these charges the judgment against Fujimori states:

“(446°) In conclusion, the Barrios Altos massacre was executed by members of the special intelligence forces — that had as a first mission the physical elimination of people, and it was clear that military orders were followed based on the guidelines provided by superiors, Humberto Jara, a journalist, interviewed Martin Rivas, who said that this action was the beginning of the rise of the Colina Group, and a way of response to the the urban action of PCP-SL and a way of eliminating - avoiding legal means - all those that the secret services alleged were linked to terrorist movements.[...].<sup>14</sup>

#### ***2.2 The murders of "La Cantuta" (Chapter X of the Judgment)***

A group of students and a teacher, a total of ten people were abducted on the morning of July 18, 1992, from the university residence located inside the campus of the "Enrique Guzmán y Valle" University in La Cantuta, Chosica, Lima. They were later found

<sup>13</sup> Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE.

<sup>14</sup> Chapter IX “Barrios Altos”; point n. 446 of the sentencing.



murdered a few kilometers from the University grounds. These murders were executed by the Colina group. The facts were of total knowledge of the state and the military high command was also involved.

One of the charges against former President Fujimori on this case, which is found in the ruling (535°) is that there is no doubt that Fujimori was personally involved and the highest ranks of DINTE and the highest ranks of military informed. And not only, also the SIN being the highest function and authority of the SINA. General Hermoza Rioz himself confirmed that the day after the fact, he was informed about it by Montesinos Torres, who told him that members of the SIE had executed a special operation at La Cantuta and that the President and the Minister of Defence Malca Villanueva were provided with former reports. [...]

### ***2.3 Kidnapping - (Gorriti - Chapter 11 and Dyer, Chapter 12 of the judgment)***

The Gorriti case — in the judgement, (536°) Fujimori is accused of having planned and ordered the abduction of the journalist Gustavo Gorriti Ellenbogen Andres. On April 6, 1992 (see II§ 4,44° K) at 3 am military personnel showed up on his doorstep and he was taken to a basement where he was greeted by Col. Alberto Pinto Cardenas - he was held in this basement until the next day . He was then transferred to the State Security Directorate at the prefecture of Lima and was almost immediately released.[...]¹⁵

In this regard, the judgment states that (557°) By virtue of Fujimori's military and intelligence control, he had decided or authorised the deprivation of liberty of Gorriti Ellenbogen as well as that of other citizens. All had been kidnapped and transferred to illegal detention centers by members of the military and they were detained for a variable period of time.

Gorriti Ellenbogen, as a research journalist, had openly questioned Montesinos Torres (Fujimori's trusted advisor) and published chronicles in that sense, which also were a direct criticism of an organisational model of the Security Forces in form or style of exercising power. He was, therefore, an opponent and, as such, the deprivation of freedom of which he was a victim took place. The timely intervention of the Spanish Ambassador in Peru and the Undersecretary of State for Latin America of The United States, who was in the country at the time made his detention very short. It is possible to have a specific and personal motive of Montesinos Torres to kidnap the journalist. The deprivation of liberty of Gorriti Ellenbogen was not a surprise act, stemming from

¹⁵ Chapter XI Kidnapping of Gustavo Andrés Gorriti Ellenbogen; Item 536 of the Judgment Op. Cit.



his hostile attitude towards the government, but a carefully designed manoeuvre, as mentioned, as a follow up from the previous day.<sup>16</sup>

#### ***2.4 The case of the kidnapping of Samuel Edward Dyer Ampudia***

The sentencing re this kidnapping (558°) was that Fujimori, in one way or another, ordered or authorised the illegal deprivation of liberty of the businessman Samuel Edward Dyer Ampudia. Without any reason or warrant, he was barred from traveling to the United States on July 27, 1992, when he was in the Jorge Chavez International Airport [...]

He was violently transferred by SIN police force under the command of colonel Carlos Dominguez Solis and was imprisoned until August 5, when military intelligence agents made him flee and removed him from the SIE and left him in one of the streets of the San Borja district of Lima.

He was being under investigation for terrorism actions carried out from the 30th of July to the 3rd of August, which yielded negative results for terrorist links. DINCOTE recommended his immediate release, but such recommendation was not accepted by the SIE nor urged by the Public Prosecutor's Office.<sup>17</sup>

The sentence states that (574°) The information from the witnesses is proven and persistent, in addition consistent with the logic of the operation of hierarchical institutions - it was obeying to a superior and the tasks entrusted were to be fulfilled. The criminal course within the institution where SIN and SIE belonged continued without issues for their executors [...]<sup>18</sup>

#### ***2.5 Other facts***

The sentence states (576°) based on declaration furnished by agents of the military intelligence services<sup>19</sup>, there was effective collaboration in decisions issued to several of the members of the Colina Group, and from the CVR Report, at least the following facts emerge:

1. collaboration with the Colina Group in the execution of 15 people and wounding of 4 people in Barros Altos on November 3 1992
2. knowledge of the disappearance and execution of six people in the town of Pativilca, San Jose Caraqujeno on January 28, 1992.

<sup>16</sup> Chapter XI Kidnapping of Gustavo Andrés Gorriti Ellenbogen; Item 557 of the Judgment Cit.

<sup>17</sup> Chapter XII Kidnapping of Samuel Edward Dyer Ampudia; Item 558; Judgment Cit.

<sup>18</sup> Chapter XII Kidnapping of Samuel Edward Dyer Ampudia; Item 574; Judgment Cit.

<sup>19</sup> OTHER OFFENSES OF THE SPECIAL INTELLIGENCE COLINA GROUP "CHAPTER XIII. Supreme Court of the Republic. Judgment of the Special Criminal Chamber in File N ° AV 19-2001 (accumulated), of April 7, 2009. Cases Barrios Altos, La Cantuta and basements SIE; Chapter XIII; Item 576.

3. On the 2nd of May 1992, another 9 people disappeared and were executed in the district of El Santa in Chimbotem at the “la Huaca”, “Javier Heraud” and “San Carlos” settlements.
4. . On June 24, 1992, the journalist Herminio Yauri Bustamante disappeared and was then executed in Huacho
5. Another five people in the same town, Huacho, the Ventocila family, were also made to disappear and were also executed on the same day.
6. Also the “evangelist,” Fortunato Gomez Palomino met the same fate in the Chorrillos district at the “Pascadores” settlement. in may or June 1992.
7. On 17 July 1992, one professor and nine students of the La Cantuta University were made to disappear and were executed
8. Disappearance and execution of a couple of people from Ate Vitarte at a not known date in 1992
9. Surveillance and monitoring of, several members of the Association of Democratic Lawyers (among them, the lawyers Crespo, Cartagena and Huatay - and the head of the movement to annihilate the PCP -SL in Lima , and other presumed members of the alleged terrorist organization, amongst thm, Camarada Joel and Angelica Salas de la Cruze, and left wing leaders like Yehudi Simon Munaro and Javier Diez Canesco - where the scope was to kill them. General EP Robles Espinoza was followed with the aim to imprison him and the capturing of Mesmer Carles Talledo.
10. Surveillance in areas with high terrorist presences, like the settlements of Huyacan and Raucana in larger Lima and to seize explosives in the hands of the terrorists - a failed case of this was on July 26 1990 in Matucana)
11. The last intervention of the Colina group was at the end of 1992, approximately in November, where they intervened in a military operation Chanchamayo The Colina group was dissolved the same year.

## **2.6 Involvement of former President Alberto Fujimori**

### *2.6.1 The sentence states:*

#### 1. Preexisting situation

(626°) the involvement of Fujimori in the events for which he is being prosecuted must be specified.

(627°)When Fujimori became President pm 28 July 1990 his main concerns were inflation, terrorism, and border control vs. Ecuador. There was no real plan at the time on how to fight terrorism, but he shaped the plan during his first year of regime.

Former President Alberto Fujimori exercised supreme command and absolute control of the military organisation in the fight against terrorism.

The Political Constitution (1979) and the new Political Constitution (1993) defines the President of the Republic as commander in chief of the Armed Forces.

Former President Fujimori always invoked this Commander in Chief - ship. He led the fight against terrorism and all the military leaders were under his direct orders.

He gave the control of the anti-subversive fight to his adviser Vladimiro Montesinos Torres,

an adviser of his absolute confidence, a former military man, expelled from the army, accused of treason, and that public opinion and the media accused of being linked to drug trafficking, in his capacity as a lawyer. He accompanied Fujimori from his stage of candidate to President of the Republic.

Fujimori and his adviser Vladimiro Montesinos Torres ordered the operational command of the fight against terrorism and the decisions ruled above the heads of the Armed Forces.

In the sentence, it is said (627°) that Vladimir Montesinos Torres finally was in charge, following the orders of Fujimori, to design and implement an anti terrorist policy, in addition to control public security, the military and the intelligence services.

### 2.6.2 *The sentencing continues:*

First steps. Tasks entrusted to Montesinos Torres.

(628°) Fujimori, in order to keep his promise to eradicate terrorism, set up an organisational system rigidly centralised of which Vladimiro Montesinos Torres had the supreme command .

(629°) Once Fujimori inserted Montesinos Torres in his initial government, Montesinos Torres started to propose trusted men to appoint to the government and the military of Fujimori. This started to take place as of June 10, 1990. His proposals were systematically accepted by the President of the Republic.

(630°) With the direct interference of Montesinos Torres a significant change in the configuration of the military and political institutions with the government of Fujimori. The changes in management positions aimed at strengthening the position of the government by putting trusted men in key positions within the armed forces, the ministry of defence and the ministry of interior, in order to be functional to his objectives for the government. 857

(631°)The foregoing only confirms that Vladimiro Montesinos Torres did not recognize a different superior than the President of the Republic and he became person of absolute confidence of Alberto Fujimori, who was aware of his activities (...)

It should noted that the accused Fujimori could ne no stranger in respect to the background of Montesinos Torres.

### 3. The power of former President Fujimori

The power of ex President Fujimori in his position of president of the Republic made him supreme head of the Armed Forces, so all the military and intelligence chiefs were under his orders.

The judgment against Fujimori states:

(633°) The republican principle leads to the subordination of the Armed Forces to the constitutional order, and the command of these belongs to the president of the Republic. The national political model is that the President of the Republic is head of state, head of government, supreme head of the Armed Forces and, in thus personifies the Nation.

(i) An important factor in this area of the powers of the President of the Republic is the political one, whereby the strategies that define and configure the National Defense System - which presides over the head of state - are reflected by the highest level bodies. At the same time, the executing agencies are the Armed Forces and the PNP, and their commander is also the President of the Republic 876

(ii) Another relevant factor is the discretionary nature of such activity, where Fujimori could choose the course of action and adapt and define its content. This is understandable because this attribute of the Supreme Commander is not regulated or circumscribed from a legal point of view, thus allowing greater political discretion in military power and in the field of national defence. However this unlimited discretion was not intended to protect Fujimori against illegal actions.

(634°) The defendant Fujimori, in the daily exercise of office, invoked insistently that he was the supreme commander of the Armed Forces and as such issued a series of provisions or orders, both general and specific, that were always followed. He gave direct orders.

(636°) The military power of the accused Fujimori as supreme head of the Armed Forces, of the National Defense System, and especially of the National Defense Council and its members, such as the Armed Forces, PNP and SIN, was direct and of first order. 886

What happened to the two defendants should not only be explained in the areas of the establishment of a dictatorship, with the centralization of power that this entails and the absence of controls for the defense of the fundamental rights of citizens, but also based on the specific model that was put in place with the expansion and superior intervention of SIN, where Montesinos Torres was active.

#### **4. The counter-insurgency strategy.**

One of the most important actions subject of judicial debate was the creation of the Analysis Group, consisting of officials SIE, naval intelligence and SIN 905 - the same that were congratulated by the accused and that even by his indication he was forced to have this mention computed for the process of promotion of officers of that year<sup>906</sup>, key to the creation of a Special Detachment of Intelligence later-. The SIN made a Document that they denominated "Text of strategic intelligence on the PCP-SL", of which a copy was given to Fujimori<sup>909</sup>. In his presentation to the Army High Command, in June in 1991, Captain EP Martin Rivas said, amongst other things, that for every terrorist act carried out against civilians, intelligence must respond forcefully and more drastically. (Sentencing n. 640°)

The final decision was always in the hands of the President and Supreme Commander of the Armed Forces, and the military would be the center piece of the internal war.

#### **5. Acts of impunity — the role of the President of the Republic.**

Alberto Fujimori always had as basic rule: the extreme protection of his adviser Montesinos Torres and General EP Hermoza Ríos.

Fujimori initially never commented on the serious crimes and on the news reported, despite the social alarm they generated.<sup>943</sup>

The break point for the regime was due to the repercussions the regime per se created and to the new political framework it generated:

(i) the public accusation General EP Robles Espinoza, followed by (ii) the findings in Cieneguilla, on July 8, 1993 of the bones of the students of La Cantuta University, as well as (iii) the location where the students and the professor were extrajudicially executed and buried (first burial).

There was, therefore, no institutional will for serious, profound and transparent clarification of the two crimes against human rights. The role of military justice in the Barrios Altos case was lamentable and obviously covert. From the outset, when Congress asked for explanations Fujimori played a markedly obstructive role, and did not help to clarify anything that worried public opinion, they were denying the facts and not contributing to an objective and clear investigation thereof.

In this way, impunity, designed and carried out from the highest instance of the State, the Presidency of the Republic - which, as has been repeatedly stated, could not be otherwise, by its size, risks and effects — was what ultimately was achieved.

In addition, mechanisms of persecution against whistle-blowers were initiated and all individual and collective efforts to clarify facts, to prosecute perpetrators and to punish those responsible were inhibited.

Such a complex, extensive, intense and persistent mechanism of impunity, as it is obvious, could not be an autonomous work of the military structure or of a sector of the intelligence apparatuses nor the secret services of the State. It must have been, part of an organised plan from the Head of State. The competition of all public authorities and state institutions of investigation and prosecution can only be explained with the help of the President of the Republic, the only authority whose political weight and institutional dimension allowed to realise such a vast articulation of wills contrary to the values of a democratic society. (Sentencing point nn. 653-9°)

### **5.1 Index analysis and determination of guilt.**

The sentence states that:

(660°) For the purpose of the operation that requires the evidence, it is necessary to reiterate the set of indications - the main or most relevant - that have been declared proven (...)

Here's how:

1. The four facts that were the object of accusation occurred during the exercise of the office of President of the Republic of the accused; they were executed materially by public agents members of the intelligence agencies or the State's secret services, and the victims were, in one case, citizens as intelligence targets because they were accused of belonging to the PCP-SL terrorist organization, and that were arbitrarily executed or abducted and extrajudicially executed - and in another case, a journalist and an entrepreneur who was arbitrarily abducted as a result of his social activities.
2. The accused Fujimori not only imposed the most relevant positions in his government - In the cases of Montesinos Torres and Hermoza Ríos. In respect to their decisive and superior intervention in the crimes under trial, he publicly defended them against the questions that arose. Fujimori insisted on the effectiveness of the role they played and on the proper fulfilment of the tasks assigned to them. In addition, he personally attacked the most important public witness: General EP Robles Espinoza, removing him arbitrarily from the Army, as well as Ampudia, whom he called a drug trafficker and tax defrauder when he legitimately protested against his own kidnapping,
3. It was Fujimori who promulgated the most disputed laws, not only to consolidate the military jurisdiction in crimes against humanity but also to give amnesty to the physical executors who had been condemned by the Supreme Council of Military Justice as well as to

inhibit prosecution against other military personnel /senior officials for crimes related to the repression of terrorism. He also promulgated the Legislative Decrees that reorganised the SINA, the military control in the Emergency Zones, the military career and the CCFFAA, which began to build up in 1991 and was an institutional mechanism that allowed the formation of a criminal apparatus and allowed for crimes against humanity and kidnappings to be performed.

4. Fujimori during his mandate, not only made the meaning, scope and framework of his links with the Armed Forces known, but also provided generic, legal provisions and gave specific orders in the most varied fields of military activity. In each relevant event, he had detailed information provided by different public channels, especially the SIN, whose management staff he appointed .

## **5.2 Crimes against Humanity**

The various indications that have been enunciated and interpreted in the previous paragraphs allows us to know what they indicate in relation to the crimes which Fujimori is accused .

These indications are not only prior, concomitant and subsequent to the criminal acts, but the main indications are close, precise, serious and well founded. It is necessary to point out that the two crimes under indictment, which, as will be seen later, from an International Criminal Law perspective, will be described as crimes against humanity, also involved actions of rebuttal in the face of emblematic terrorist attacks.

The kidnappings occurred in connection with the coup d'état in one case, and in the other once the authoritarian regime against intelligence objectives was consolidated, this time with respect to personalities who might have jeopardised the social acceptance/imposition of Fujimori's regime (...)

Fujimori was not oblivious to the set of facts evidenced. On the contrary, because of his position of power in respect to the events that occurred and the protection given to the most committed persons Montesinos Torres and Hermoza Ríos, and by personal attacks on those who objected, it is reasonable to assume he was a central point in all these actions.

Consequently, there are multiple indications that explain the context, the commission of the four crimes and the subsequent cover-up actions that, in common line, point directly to the guilt of Fujimori.

In light of the objective gravity of the events and their well-founded social alarm, the extension in time of the activities of the Colina Intelligence Special Detachment Unit and the number of dead individuals it caused, the serious commitment to the hierarchical structure of all public



bodies involved the fight against terrorism, as well as the acts of cover-up, all of which are immediately linked to crimes against humanity must have been imposed.

It is reasonable to imply that such a vast criminal plan, and the institutional commitment could only be carried out with the decisive involvement of the Head of State - even more so in a context of concentration of power and position. The guilt of Fujimori is therefore proven beyond reasonable doubt.

## **6. Criminalisation (Chapter XVI of the Judgment)**

### **6.1 The crime of aggravated abduction: (Gorriti Ellenbogen - Dyer Ampudia).**

The crime of kidnapping, i.e., the inability of the subject to be able to freely move around or stay, hence basic kidnapping means that the agent deprives, without right, without reason, or justified faculty, the personal freedom of the victim<sup>20</sup>.

There is no doubt that the Gorriti Ellenbogen was deprived of his freedom.

In the case of DYER AMPUDIA, the deprivation of liberty occurred in the context of an authoritarian government, outside the Constitution and the values that govern it.

The ruling, as stated above, is based on paragraph 1 of article 152 of the Criminal Code. The prosecution, therefore, asserts the concurrence of two specific aggravating circumstances: cruel and endangered treatment of the life or health of the aggrieved.

1. The cruel treatment of the victim must occur on the occasion of the act of kidnapping or during the period of captivity.
2. The endangerment of the life or health of the aggrieved person requires a concrete risk to their integrity health.

Subjectively highlights the awareness of the agent of the danger involved for the victim by the actions taken to kidnap and retain the person. The agent's intention is to encompass not only the very act of kidnapping and holding the passive subject, but also the intelligence that, with the actions being carried out, a situation is being created which entails real risks for the victim.

From a subjective perspective, the whole set of factual characteristics listed reveals that the agents who physically executed the abduction — and those who ordered it — proceeded without the least elementary sense of humanity, nor that of respect for the person; (The means, context and ends were appropriate to intensify the sufferings of the victim) in an unnecessary way with respect to a simple abduction, i.e. to have the persons in a state of anxiety about what is going

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Judgment Op. Cit. Part Three. Legal Fundamentals Chapter I. Crimes committed.

to be done with him/her. The kidnappings de facto resulted in removing the individuals from their day-to-day activities, which were taken into account in order to kidnap the individuals and thereby concurrently annul them temporarily in their social function, for the political benefit of the shift regime.

## **6.2 The crime of murder: ferocity and treachery.**

The Analysis of the crime of murder under the circumstances of ferocity and treachery is material for discussion . Ferocious murder means killing a person with a motive or with an inhumane motive. It is a circumstance that belongs to the sphere of guilt.

Murder by treachery highlights a certain circumstance of execution, in which the agent ensures the execution and avoids the risks of defence by the victim — it is a circumstance that involves a greater depreciation of the action, a greater objective danger , without neglecting the subjective aspect of the agent, which are to ensure the defencelessness of the subject.

It is a circumstance that implies a greater devaluation of the action, a greater objective danger of the agent's conduct, 998 without neglecting the subjective aspect of the agent, which alludes to the spirit of procuring, from the means, modes or Forms that it uses in the execution of the fact, the defenselessness of the subject or to take advantage of the subject 999. The ruling of the July 6, 2004, number 999-2004 / Tacna, points to the character of mixed circumstances.

The circumstance of ferocity in homicide has as significant element that the motive or the cause of death is of a despicable nature - absent of definite objective, or despicable - brutal and ferocious . (...)

In the present case, in respect to the execution of the facts and what determined the deaths that occurred in the Solar de Barrios Altos and Ramiro Prialé Avenue, it is necessary not only to prepare to commit the crime in advance, which presupposes the existence of a preconceived plan, at least in its execution guidelines, for which purpose a Special Intelligence Detachment was set up, whose specific mission was, among other things, to kill those whom they believed were linked to the political or military apparatus of the terrorist organisation "Sendero Luminoso".

The material executors acted with absolute coldness and determination, in what they understood was a military operation to eliminate hikers, for which purpose they went with secrecy and decisiveness to the Solar del Jirón Huanta — Barrios Altos and the National University of Education "Enrique Guzmán y Valle "La Cantuta — where they allegedly were to search for terrorists in the student and teacher facilities. They surprised the victims, who did not expect such action — the executors killed them using their war weapons.

Once the relevant analysis and valuation was done it was established in the sentence that homicide for felony is admitted and homicide for ferocity is rejected.

### 6.3 The crime of serious injury

As previously stated, the Barrios Altos bombing resulted in fifteen people dead and four wounded, all of them shot.

The offence of serious injury equals serious harm to the bodily integrity or health of the person 1009, caused by:

Damage to the body – bodily integrity – or psychophysiological health 1011 must be serious. The legislator defines the severity of the injury, incorporating precise obligatory qualifying circumstances. Among them, and for the purposes of the present case, are: a) injuries that endanger life imminently b) injuries that cause permanent disability, and c) injuries that require thirty or more days of assistance or rest.

In the case of "imminent danger of life", the injury – due to its characteristics and the nature of the injury, as well as the conditions or constitution of the taxable person – must create a concrete, real, effective and serious danger on the life of the victim. That is, the inferred lesion represented a certain possibility of complications, which usually arise when internal organs and tissues are widely damaged. The victim must have been in real danger of dying.

In the present case, this happened to the injured Leon and Rhodes Alvitres. In respect to the first, one of the projectiles struck the chest and injured a viscera that covered the lung. In respect to the second, two of the projectiles produced two perforations in the small intestine. Both lesions severely weakened the respiratory and digestive functions respectively; Emergency surgery were needed as the lives of the victims were compromised and thus surgery were of vital necessity.

In the case of "injuries causing permanent disability", the person, as a consequence of the injury, has seriously had his normal physical possibilities he enjoyed in his daily life reduced. E.g. he has no longer the possibility to move on his own accord and thus would need the help of third parties or the assistance of any mechanical, electromechanical or any other means.1015 It is not necessary, of course, that the invalidity is incurable, but that it persists for a considerable time.

This is the case of the Livias Ortega, who had to be operated on urgently because he suffered a wound in the chest, at the intra-capillar level, second and third dorsal vertebra, which caused him a paraplegic neurological problem. The resulting invalidity is therefore permanent.

In the case of “causing any other damage that requires thirty or more days of assistance or rest,” the criterion of time limits has been used, provided that the severity of an injury is in part measurable by the amount of time needed to recuperate health 1016. It is a formula that allows the analogical interpretation, so that the damage it foresees can be permanent or reversible — it can disappear, returning the organs or health to their normal state in a more or less prolonged time 1017 This facilitates to cover all the range of injuries not foreseen exhaustively, with the only limit that require incapacity of more than twenty-nine days, and not working 1018.

Condorcahuana Chicaña had to undergo surgery because she suffered two fractures, and although the bullet impact did not compromise vital organs, it required ten days of facultative care and one hundred and twenty days of legal medical incapacity. Consequently, the criterion of the term is met: incapacity of more than twenty-nine days.

Thus, it is to be concluded that the intent was to injure these individuals gravely.

#### **6.4 Crimes Against Humanity**

The sentence states:

1. Crimes against humanity or crimes against humanity are those that "... offend the general principles of law and become a concern of the international community".

They have drawn attention to the international concern and reaction since the Hague Conventions on the Laws and Customs of the Earth War of 1899 and October 1907 - especially its eighth paragraph, and have evolved with respect to its elements, principally, with:

(i) the Declaration of May 28, 1915 of the Governments of France, Great Britain and Russia;  
(ii) the Preliminary Conference of Peace of January 1919;

iii) Article 6 (c) of the Statute of the International Military Court at Nuremberg on 8 August 1945 - the notion of "crime against humanity" was for the first time specifically coined in this statute;

iv) Article 5 (c) of the Statute of the International Military Court of the Far East 1020;

v) Law number 10 of the Allied Control Council of December 20, 1945

vi) article 5 of the Statute of the International Court of the Former Yugoslavia - approved by Resolutions number 808, of January 22, 1993 and number 827, of May 25 of that same year by the Council of United Nations Security;

vii) Article 3 of the Statute of the International Criminal Court of Ruanda, approved by Resolution No. 955 of the United Nations Security Council on November 8, 1994 [both statutes contributed to reinforce customary punishment of crimes against humanity;

And (viii) Article 7 of the Statute of the International Criminal Court of July 17, 1998, in force since July 1, 2002, which formulated a comparatively more precise criminal offence, which references on the one hand, the Statutes of the International Military Courts of Nuremberg and the Far East, and, on the other hand, the International Criminal Courts of the former Yugoslavia and Ruanda.<sup>1022</sup>

The provisions indicated in the first case, under the essential scope of the Nuremberg Statute, as part of customary international law and were pronounced prior to the events of Barrios Altos and La Cantuta, and are fully applicable to the work of subsumption <sup>1023</sup> <sup>1024</sup>

It is a matter of certainty to identify certain limits as (i) those provisions, which are consolidated around the Nuremberg Statute, recognise a customary international rule; (ii) it provides the constitutional requirements of the principle of criminal legality (prior, strict, written and certain law: articles 2 ° 24. d) of the Constitution and II of the Preliminary Title of the Penal Code. From a material perspective, at the time of the commission of the crimes in 1991 and 1992, a law that would have incorporated a criminal offence into our punitive system which, on the one hand, would comprise all elements described in the customary international rule as an international crime – even today the ordinary legislator has not complied with the requirements of material classification derived from the ratification by Peru of the Statute of the International Criminal Court - and, on the other hand, the definition of a corresponding sanction; and (iii) it is admitted that crimes against humanity affect essential Human Rights, so that the core of the conduct that prohibits a very serious violation of individual human rights has been sufficiently established, and thus the knowledge and predictability of this could not be denied.

For this reason, it is necessary to take into account, for proper identification, contextual elements or circumstances – which are the ones that give certain facts at hand the character of an international crime in respect to the attacks that caused the deaths and serious injuries of 29 people, and which at that time were legally established in our domestic law as crimes of homicide and serious injuries, and that do not oppose the provisions of articles 45 and 46 of the Criminal Code. The customary international rule requires that attacks occur in the course of a widespread or systematic attack on the civilian population or a part of it, as well as other elements which in the following paragraphs will be specified, all of which are duly predetermined – present limits Sufficiently defined – by the aforementioned customary international norm. The concurrence of these circumstances, in turn, justifies their

international persecution, the inadmissibility of it being statute-barred and the imperative necessity of the punishment. It can therefore be said that they are crimes of murder and serious injuries which by their characteristics constitute internationally, at the time of their persecution, crimes against humanity, and thus allow the application of the legal consequences provided by international criminal law.

Depending on the development or evolution of this international criminal type, it is possible to define the crime against humanity, in general, following GIL as any attack on fundamental individual legal rights (life, physical integrity and health, freedom ...), both in times of peace and war, as part of a generalised or systematic attack carried out with the participation or acceptance of the political power of de jure or de facto.

Murder was always considered a form of crime against humanity. Article 7 (1) of the Statute of the International Criminal Court emphasises the following: "For the purposes of this Statute, "crime against humanity" means any of the following acts when committed as part of a generalised or systematic attack against a civilian population and with knowledge of said attack.

It is understood, according to international jurisprudence, that the crime against humanity is of a special nature with a greater degree of immorality in its conduct than ordinary crimes, 1029 there is a requirement to verify:

1. From an objective or material aspect, the concurrence of certain aspects that have been configured and recognised based on the positive or customary order of protection of human rights. Specifically, the requirements imposed by international instruments and tribunals have always referred to (i) the status of the perpetrator (state authority, or a criminal organisation that assumes de facto control of a territory), (ii) the nature of the offence (organised acts, generalised or systematic — the term 'generalised' refers to the number of victims, whereas the adjective 'systematic' contains the idea of a methodical plan<sup>1030</sup>), (iii) the opportunity to carry out an illicit action, e.g. an internal or external conflict situation<sup>1032</sup>, as well as (iv) the category and situation of the victims (civilian population and defencelessness)<sup>1033</sup>.

2. From a subjective point of view, it is required that the subject knows the broad and general context in which the act occurs, as well as that the behaviour is or will be part of a generalised or systematic attack — organised violence — against the civilian population in development of a political plan<sup>1034</sup> or policy. It is clear that customary international law had never recognised as a crime against humanity any commission of an isolated inhuman act, the act had to be part of a larger campaign of atrocities committed against civilians<sup>1035</sup> with all this, murder has been characterised as a crime against humanity,<sup>1036</sup> specifying that it is the consequence or expression of a systematic aggression, coming from the State or its organs of power, which is

promoted or endorsed by official policies and directives, or quasi-official ones and that falls on the civilian population in a conjuncture of war or social conflict. There is no obstacle to as well incorporate serious injuries into these considerations, not only because in the Barrios Altos case they were part of the same attack aimed at annihilating alleged terrorists, but because the result was consistent with that objective or mission.

Based on such a normative statement, the doctrine has emphasised the structured, political and systematic level of acts of aggression that constitute crimes against humanity. In relation to this BOTH has stated: "The common denominator of a systematic attack is that it is carried out according to a preconceived policy or plan, highlighting the organised nature of the attack. The attack is systematic if it is based on a policy or a plan that guides the individual perpetrators with respect to the object of the attack, i.e. the specific victims ... This is actually the international element of crimes against humanity, since it makes the criminal acts, which in other circumstances would be common, acquire the character of crimes against humanity. In essence, the political factor only requires that casual acts be excluded from individuals acting alone, isolated and uncoordinated ... Such common criminal acts, even if committed on a generalised scale, do not constitute crimes against humanity, if they are not tolerated, at least by a State or an organisation ... Thus, for crimes against humanity to be constituted, crimes committed in a general way must be linked in one way or another to a state or organisational authority: they must be at least tolerated by said state or authority.<sup>1037</sup>

The International Criminal Tribunal for the Former Yugoslavia in *PROSECUTOR V. BLASKIC* recognises the systematic nature of an attack based on the following indicators, always inferred from the context: "(a) the existence of a political objective, conformity by which the attack is committed, or an ideology designed to destroy, persecute, or weaken the community; (B) the perpetration of a very large scale criminal act against a group of civilians, or the repeated and continuous commission of inhuman acts linked to each other; C) the preparation and significant use of public or private resources, whether military or otherwise; D) the involvement of high level political and / or military authorities in the definition and establishment of the methodical plan "<sup>1038</sup>

As indicated in the *AMICUS CURIAE* of the University of Texas at Austin, with quotes from the judgment of appeal *PROSECUTOR V. BLASKIC*, on July 29, 2000, paragraph 101, only the attack — not the specific acts by which the accused is accused — must be generalised or systematic; In addition, by an appointment of *SCIDH ALMONACID ARELLANO V. CHILE*, on September 26, 1996, paragraph 96, even a single act, committed in the context of a generalised or systematic attack, is sufficient to produce a crime against humanity.



On the basis of the foregoing, it is clear that acts of murder and serious injury, which are the subject of prosecution, go beyond their strictly individual or common scope by fully conforming to what identifies crimes against humanity. The murders and serious injuries of Barrios Altos and La Cantuta are also crimes against humanity. Fundamentally, because they were committed within the framework of a state policy of selective but systematic elimination of suspected members of subversive groups. This policy, on the one hand, was designed, planned and controlled from the highest levels of state power, and carried out by public agents – military intelligence agents – who used the military apparatus to do so; And, on the other hand, according to its objectives, affected a large number of defenceless people of the civilian population.

This conclusion (...) proves that it was a state decision ordered or approved by the Head of State, which was executed by the military intelligence agencies - Special Intelligence forces ultimately directed by the SIN, with all conceivable official support, whose ultimate objective was the forced disappearance and /or arbitrary or extrajudicial execution of suspected subversive individuals, of which two significant events – but not the only ones – were precisely Barrios Altos and La Cantuta.

The decisions of the CIDH and the Constitutional Court, which also classified these acts of crimes against humanity in accordance with International Criminal Law, are based on the accumulation of evidence already analyse.

### **7. Sentencing of former President Alberto Fujimori**

For these reasons, administering justice in the name of the Nation and with the criterion of conscience that the Law authorises, having raised, discussed and voted the factual issues that run separately, the Special Chamber of the Supreme Court of Justice of the Republic:

condemn Alberto Fujimori or Kenya Fujimori, as an intermediary author of the commission of the offences of:

- I. Qualified homicide – murder, under the aggravating circumstance of treachery, to the detriment of 25 persons whose names are indicated (case of Barrios Altos and La Cantuta)
- II. Severe injuries, to the detriment of four persons whose names are known.)

The aforementioned crimes of qualified homicide and serious injuries constitute crimes against humanity under International Criminal Law.

III. Aggravated abduction, under the aggravating circumstance of cruel treatment, to the detriment of two persons (cases of Gustavo Andrés Gorriti Ellenbogen and Samuel Edward Dyer Ampudia).

As a result, Fujimori as imprisoned twenty-five years in prison, which became effective on November 7, 2005, when he was deprived of his liberty in Chile, in accordance with the request for extradition until June 18, 2006 as he obtained bail, and from the 22 September 2007 was at the disposal of this Court, and the sentence runs through February 10, 2032

In addition, the sentence (825°) sets amounts of money that the condemned must pay to the injured, which will accrue legal interest from the date on which the damage occurred.

The Peruvian State has been repeatedly denounced for violation of Human Rights before the Inter-American Court of Human Rights, based in San José, Costa Rica

The Peruvian judiciary, in addition to imposing a 25-year custodial sentence on former President Alberto Fujimori for human rights violations, has recently sentenced senior officers of the Armed Forces for the same events.

On the other hand, Peruvian justice, for actions of murders, terrorism, kidnapping and disappearances did sentence the leaders of the Sendero Luminoso movement. The leader Abimael Guzman was sentenced to life imprisonment. Other senior leaders and members of this movement were also sentenced to prison terms of between 15 and 30 years.<sup>21</sup>

### **8. *Final comments.***

In the case of the conviction, former President Alberto Fujimori finds that the construction of an authoritarian and undemocratic state was a necessary but not sufficient condition for the violation of human rights in Peru. To this condition, we have had to add situations of social and political violence that sought to destabilise and destroy the established social and legal order. But in addition, the state has had to be under the control of a government that instead of using democratic institutions to face and defeat the subversive belligerent forces opted for methods that indiscriminately and arbitrarily produced disappearances and deaths of people in an extra judicial way.

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<sup>21</sup> Sentence cit. Part 4. Decision