

Judge's Pursuit of Pinochet Funds Could Open Legal Avenues for Asset Forfeitures

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By Colby Adams

A Spanish judge's use of universal jurisdiction in a case involving a bank's alleged role in laundering money for Augusto Pinochet could affect how countries cooperate in prosecuting financial crimes.

Madrid-based judge Baltasar Garzon has called on the former wife of the deceased Chilean dictator and three employees of Santiago-based Banco de Chile to pay a \$77 million bond as part of the court's investigation into whether the four individuals helped Pinochet launder money internationally, according to Nov. 30 reports by the *Associated Press* and *Reuters*.

The Spanish court's criminal investigation began in 2007 after the Fundacion de Salvador Allende, a Madrid-based nongovernmental organization seeking compensation for human rights violations committed during Pinochet's rule, claimed that the four laundered money for Pinochet, according to the reports.

Garzon fixed the amount of laundered money at over \$77 million of stolen government funds, although the location of all the accounts was unclear, according to the *Associated Press*.

That prosecutors have sought Pinochet's funds under the principle of universal jurisdiction is very unusual, and possibly unprecedented, according to Gregory Gordon, a University of North Dakota law professor who studies international law. The principle has solely been used for the conviction of jus cogens crimes such as genocide or torture, he said.

"There's a fascinating legal issue presented here: can universal jurisdiction be extended to financial cases?" said Gordon. "Including financial crimes may be pushing the envelope too far with respect to the scope of universal jurisdiction."

Should the prosecution prove successful and financial crimes be included within the ambit of universal jurisdiction cases, the move could open new legal avenues for international asset forfeiture cases, he said.

The citation of universal jurisdiction to target financial crime should put financial institutions on notice, said Steven Young, director of the Caux Roundtable, a Saint Paul, MN-based organization that lobbies for economic and social reform.

"At the minimum, this is going to be a big headache for the banks, but the impact will be mostly reputational," said Young. "This is kind of a warning to this bank and other banks to be sure who their customers are."

Garzon warned that if the four do not put up the bond within 10 days, he would seize the \$77 million along with an extra \$26 million penalty to cover "whatever financial liabilities may arise," according to the reports.

"I've never seen that tactic used internationally," said Michael Diaz, a managing partner with Miami-based law firm Diaz Reus & Targ, LLP, who believes that the accused won't comply with the order. "The court is asking the defendants to freeze their own assets, to do the court's job for them."

That's because Spain's multijurisdictional laws aren't very robust, said John Patrick Quirk, president of Asset Relocation and Recovery International, Inc, a Boca Raton, FL-based consultancy.

"Spanish law in the criminal area is not as strong as American law," he said. "A U.S. attorney can go to a lawyer specializing in MLATs and seize money through these treaties, but the Spanish don't have that ability." A mutual legal assistance treaty (MLAT) allows for cooperation and exchange of information between two countries in enforcing criminal laws.

The investigation is not new terrain for Banco de Chile. The Spanish court's probe follows a similar lawsuit filed in a Miami federal court in March by the Chilean government, which accused the bank—along with Banco Santander, Espirito Santo Bank and PNC Financial Services Group—of laundering over \$26 million of funds stolen by Pinochet.

That figure matched later estimates arising from a September investigation into Pinochet's finances by Chilean judge Manuel Valderramos. The investigation, which was independent of Garzon's inquiry, ultimately found no proof that Pinochet's former wife participated in money laundering, contrary to the Spanish court's charges, according to a Nov. 30 report in Madrid-based Europa Press.

U.S. investigators have said they know of over \$100 million in at least 125 accounts within the United States, according to a March 2005 report by the Senate Permanent Subcommittee on Investigations, which also revealed that senior officials of the Riggs Bank made several trips to Chile to entice Pinochet into opening bank accounts in the United States.

Banco de Chile settled the lawsuit brought by Chile in October for over \$2 million, while the South American country's case against the other banks remain unresolved, according to William Hill, principal counsel for the Chilean government in the Miami lawsuit. A discovery hearing in the case was held Thursday.

Calls to the press offices of the three banks were not returned by press time. Multiple calls and emails to the Salvador Allende Foundation in Spain were not responded to by press time.

Augusto Pinochet died in December 2006 while under house arrest in London, having never faced trial on human rights violations arising from his military rule of

Chile from 1973-1990. English authorities refused his extradition to Spain on the grounds of poor health.

In October 2007, the Chilean government charged Pinochet's five children, three retired army officials, his widow and fourteen others with "misuse of fiscal funds." The charges arose from allegations that Pinochet placed \$25 million in embezzled funds in the now defunct Riggs Bank, but the case was dropped when a Chilean appeals court ruled that the defendants couldn't be charged with embezzlement because they weren't government employees, according to the Chilean Ministry of Justice.

PNC Financial Services merged with Riggs in 2004, after Riggs agreed to pay \$9 million to Pinochet's victims for laundering the former Chilean dictator's money.