

# Judge Says Chile Can Be Sued For Bombing Death Damages

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A U.S. judge ruled yesterday that the government of Chile can be sued in the United States for money damages in connection with the bombing deaths of former Chilean Ambassador Orlando Letelier and a coworker here in September 1976.

The decision by U.S. District Judge Joyce Hens Green is the first to hold that a foreign government is not immune from lawsuits that allege responsibility for negligence or for intentionally wrongful acts by those governments in the United States.

In a suit brought in the U.S. court here, survivors of Letelier and Ronni K. Moffitt claimed that the Chilean government directed and aided its agents to carry out Letelier's assassination.

The Chilean government, which vigorously denied the allegations, contended that even if it were involved, the Foreign Sovereign Immunities Act of 1976 protected Chile from liability for any acts that were public, or governmental in nature, such as a political assassination.

Green rejected Chile's argument that Congress, in drawing up the law, only intended to hold foreign governments accountable for private acts, such as auto accidents. Instead, Green said, the plain language of the law says that foreign states are not entitled to immunity from money damages for death or injury caused by negligent or wrongful acts of those states, its officials or employees.

While there is an exception in the law for certain "discretionary" acts

that involve a policy judgment and decision, Green said, "there is no discretion to commit, or to have one's agents commit, an illegal act" as alleged in the Letelier and Moffitt lawsuit.

"Whatever policy options may exist for a foreign country, it has no 'discretion' to perpetrate conduct designed to result in the assassination of an individual . . . action that is clearly contrary to the precepts of humanity as recognized in both national and international law," Green wrote in a 15 page opinion.

Since the lawsuit was filed in 1978, the Chilean government consistently has maintained that the federal court had no jurisdiction to hear the case. In order to protect that claim, Chilean government representatives never formally appeared in court but rather sent responses to the court in the form of "diplomatic notes" funneled through the State Department.

In May 1979, U.S. District Court John Pratt held the Chilean government in default for failure to respond to the suit. The case was later transferred to Judge Green. Although Pratt's action may have established jurisdiction in the case, Green wrote yesterday, "the potential diplomatic impact of any action by the Court" warranted a full discussion of the immunity provisions of the Foreign Services Immunities Act.

The next step in the case is for the Letelier and Moffitt survivors to present evidence to the court in support of their contention that the Chilean government was involved in the assassination. If Green finds for the survivors and orders a money judgment against the Chilean government, they could then move to attach Chilean assets in the United States.

In addition to the Chilean government, the civil damage suit brought by the Letelier and Moffitt survivors names as defendants the Chilean secret police agency, various secret police officers, five Cuban exiles charged with criminal offenses in connection with the murders, and Michael Townley, a former DINA agent and the U.S. government's key witness in the 1979 trial.