THE FIGHT AGAINST CORRUPTION IN CHILE

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I. INTRODUCTION

This paper intends to show how corruption crimes and offences are investigated in Chile, identifying the principal agents involved in the investigations, the law governing them (including procedure), and also the tools and techniques available for prosecutors.

It will also try to approximate the problems faced by prosecutors in investigations, and the possible solutions to those problems. Finally, some examples of corruption cases will be given.

To begin, it is necessary to give a brief background of the Chilean political and legal system, so as to provide a context in which the following discussion can be understood.

A. Legal and Political Background of Chile

1. Political System

Chile is a democratic republic, and has a presidential system of government. The Constitution has been in force since September 1980, and has undergone two large-scale reforms since then.[1]

The President,[2] elected for a period of four years, is head of State and appoints the cabinet. The President cannot be re-elected for a consecutive period. There is a bicameral legislature (congress) with a Senate (upper house) and a Chamber of Deputies (lower house). The Senate comprises 38 members elected for eight years and renewed partially every four years; the Chamber has 120 members who are all elected every four years at the same time as the President. Congress meets in the city of Valparaíso.

2. Geographic and Administrative Division

Chile is a unitary state. It is divided into 15 administrative regions, each of which is headed by an *intendente* appointed by the President. Every region is further divided into provinces with a governor, also appointed by the President. Each province is divided into municipalities, lead by a major (*alcalde*).

3. Criminal Procedure System

Chile thoroughly reformed its criminal procedure system from 2000 to 2005, with the gradual adoption of a new Criminal Procedure Code (CPC) in all regions of the country. The reform changed the agencies involved in the fight against crime and the conduct of investigations. Before the new code was adopted, Chile's criminal system was mainly inquisitorial; the new code introduced an adversarial system and the figure of the public prosecutor.

4. Chile and the Fight against Corruption

(i) Perception of Corruption

The fight against corruption is a very important issue in Chile, although there are not as many cases as in other Latin American countries.[3] An explanation for the low level of corruption might be the high intolerance that exists in all sectors of society to it. Nevertheless, as the media coverage and judicial proceedings have,

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[1] The first major reform occurred in 1989, and the most recent in 2005.

[2] The current president of Chile is Ms. Michelle Bachelet.

[3] In Transparency International's 2006 Corruption Perception Index, Chile is ranked 20 out of 163 countries.

in recent years, highlighted some noteworthy matters in the fight against corruption, serious corruption allegations have surfaced in various public agencies, including the government sports agency, and a recent public opinion poll indicated that the perception of domestic corruption is greater than that registered during a major corruption scandal in 2002.[4]

(ii) Government Actions to Fight Corruption

Although there is regulation related to corruption crimes and offences, since the poll indicated a high perception index of this kinds of conduct, in November 2006, President Michelle Bachelet announced an anti-corruption programme and created a commission co-ordinated by the Minister of Economy which includes the head of Transparency International Chile, academics and other officials. This commission has accomplished one of its purposes: drafting a Probity Code that should be mandatory for all public officers while performing their duties. Other tasks, related to legal reform, are still pending, but they are working to achieve their goals as soon as possible.

(iii) International Conventions Approved by Chile

Chile signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and it was ratified on 13 September 2006, the date when the ratification instrument was deposited at the United Nations.

Previously, Chile had signed and approved the Organization of American States (OAS) Convention Against Corruption, which was enforced on 15 September 1998.

Chile has also signed and approved the Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

II. INVESTIGATION, PROSECUTION AND SANCTIONING OF CORRUPTION CRIMES AND RELATED OFFENCES

A. Law governing Corruption Crimes, Offences and Misdemeanours

1. Penal Code

This conduct is mainly addressed in the Chilean Penal Code (PC) which is the fundamental law in criminal matters.

There is a special chapter dedicated to corruption crimes and misdemeanours called “de los crimenes y simples delitos cometidos por funcionarios publicos en el desempeño de sus cargos” (Crimes and Misdemeanours Committed by Public Officials Within the Course of Their Duties).

The main crimes and offences contained in the referred chapter are:

- Embezzlement/Misappropriation of Public Funds
- Other diversion of property by a public official
- Fraud affecting public property
- Active and passive bribery of national public officials
- Bribery of foreign public officials and officials of public international organizations
- Trading in influence
- Abuse of functions
- Abuse of authority
- Illicit enrichment.

Sanctions for the most serious offences:

[4] The poll was conducted by the *Centro de Estudios Públicos* (CEP). (See part 6 of the December 2006 poll at http://www.cepchile.cl/dms/lang_1/cat_443_inicio.html).

Crime / Offence / Misdemeanour	Sanction
Embezzlement / Misappropriation of Public Funds	541 days up to 15 years
Fraud affecting public property	541 days up to 5 years
Bribery of national public officials	61 days up to 3 years
Bribery of foreign public officials and officials of public international organizations	61 days up to 3 years
Trading in influence	541 days up to 3 years

2. Special Laws

There are other crimes and offences which may be committed by public officials within the course of their duties and these are contained and provided for in special laws.

Money laundering is addressed by a special law (No. 19,913), as are procedures for asset recovery (generally related to economic issues).

B. Procedure and Intervenient Agents

The law governing all the stages of the investigation and prosecution of corruption crimes and related offences is principally found in the Chilean Criminal Procedure Code (CPC). As noted above, Chile went through a complete reform of its criminal procedure system from 2000 to 2005, with the adoption of a new CPC. This reform brought changes in the agencies involved in investigations and prosecution of crimes, including corruption.

Before the new code was adopted, Chile's criminal system was inquisitorial, with all powers concentrated in the hands of the criminal court judge: the same judge conducted the pre-trial investigation (through the police), conducted the trial and ruled on the case in the first instance. This was a written procedure.

The reform and the new code introduced an adversarial system and the figure of the public prosecutor and created new Courts, based on oral procedures.

1. The Guarantee Courts and the Criminal Trial Courts

As part of procedural reform, the Organic Code was also modified, in order to incorporate the newly created Guarantee Courts and Criminal Trial Courts, which have replaced the previous criminal courts. The Guarantee Courts are charged with deciding upon criminal procedure issues that involve the fundamental rights of persons involved in criminal investigations. They can also rule in minor cases (those that have associated lower sanctions) such as most of the corruption offences.[5] They are staffed by Guarantee Judges. The Criminal Trial Courts hear cases of criminal offences of all kinds, including corruption. Appeals are heard by Courts of Appeal with further review possible by the Supreme Court.

2. The Public Prosecutor's Office

The new criminal procedure reform has instituted the Public Prosecutor's Office (PPO) as the public agency in charge of investigating and prosecuting alleged criminal activities, including corruption. It has been incorporated into the Constitution, as an independent organism, headed by the National Prosecutor.[6]

The selection process for the National Prosecutor involves the participation of the President, Senate and Supreme Court. A candidate for National Prosecutor is first selected by the President from a list of five possible candidates supplied by the Supreme Court. The President can only nominate the proposed candidate as National Prosecutor providing he or she is approved by a two-thirds majority vote in the Senate. As the three State Powers intervene in the designation, this ensures that political considerations do not influence the investigation and the prosecution of any type of crime, especially corruption.

[5] These judges may rule in cases where the punishment required by the prosecutor is five years or less.

[6] Before the legal reform, there was no Public Prosecutor's Office in Chile, and that role was performed by judges.

The current National Prosecutor, Mr. Sabas Chahuan Sarras, was elected in October 2007, and assumed the post on 1 December 2007. Former National Prosecutor, Mr. Guillermo Piedrabuena Richard, who had been the National Prosecutor since 2000, finished his eight year period at the end of last November. He was the first National Prosecutor in the history of Chile.

The Public Prosecutor's Office is hierarchically organized. There are 18 regional prosecutor's offices, including four for the Metropolitan region of Santiago (the capital city), each with a regional prosecutor and deputy prosecutors who work under him or her.

The National Prosecutor can issue general instructions on different kinds of offences. Of particular importance regarding corruption criminal prosecution is the National Prosecutor's Instruction 29 of January 2007 ("Instruction 29"). However, the National Prosecutor is prohibited from sending instructions to prosecutors on particular cases (only regional prosecutors can intervene in individual cases, due to Article 17 of the Organic Constitutional Law on the Public Prosecutor's Office).

C. The Investigation

1. Investigation Phases

Criminal investigations are divided into two broad phases in Chile: (1) the "preliminary investigation" conducted by the prosecutor with the assistance of the police investigators; and (2) the "formalized investigation" which commences once the prosecutor informs a person, in the presence of the Guarantee Judge, that he or she is being investigated for one or more offences. Both procedures will be referred to from then on as an "investigation", since the only difference between them is that when formalized, the suspect is formally notified of its existence, and it can last a maximum of two years.[7]

During their informal phase, investigations are generally known only to the intervenient parties (the prosecutor, the suspect and his or her attorney, and the victim), unless the prosecutor orders secrecy for a maximum period of 40 days. A suspect who learns of an investigation, however, can seek an order from a Guarantee Judge requiring the formalization of the investigation.

There is also the possibility, during the preliminary phase, that the suspect is not at all aware of the investigation, because the prosecutor needs it to be confidential. This preliminary investigation has no time limits. The only limit will be the period during which prosecution might be brought (prescription of the offence).

Once the investigation is formalized, it can last a maximum of two years, unless the Guarantee Judge establishes a shorter period. The investigative data can be made known to all the participants, as explained above. Secrecy can also be ordered by the prosecutor during the formalized phase, in the same terms as detailed before.

Regarding corruption cases, normally there is a long informal stage, so that when the investigation is formalized, there is little risk to the investigation by reason of the disclosure of the case file. In money laundering cases secrecy can be maintained for a maximum period of six months, and one of the basic offences of money laundering can be corruption crimes.

2. Starting an Investigation

Mandatory prosecution is the general rule in Chile, so prosecutors can open a preliminary investigation (i) upon receiving a report of a suspicion; (ii) on their own initiative; or (iii) upon a complaint filed by the victim.

(i) Report of a Suspicion

Public officials are subject to reporting obligations contained in particular in the CPC and a law governing public administration. Pursuant to Article 175 CPC, civil servants are required to report any crimes of which

[7] There are some other differences between them, but they refer only to procedure, and do not change the nature of the investigation.

they become aware in the course of their duties. Article 55 of Law No 18,834 on the Administrative Statute Establishing the Obligations of Public Officials (the "Administrative Statute") provides for a similar obligation. Obligations of secrecy or discretion are not an excuse for not reporting an offence.

Sanctions for non-reporting are provided for in the CPC. Pursuant to Article 177 CPC and Article 494 of the PC, failure to report offences is punishable by a fine of between one and four monthly taxation units (*unidades tributarias mensuales*, UTM) [USD 64 to 256], which is low.[8]

A public official who fails to report a crime of which he or she becomes aware because of his or her functions could be subject to administrative responsibility and disciplinary measures under Art. 119 of Law No. 18,834. Public officials are generally aware of their obligation to report suspicions of crimes.

For the general public, the CPC expressly provides that any person with the right to disclose information on suspicions of offences may go to the Public Prosecutor's Office.[9] The regional Prosecutor's Offices have call centres, where reports can be made and information can be obtained on criminal offences.

Reports of most corruption cases originate from agencies with oversight powers, and secondarily from public officials, due to their obligation. Reports from the general public are unusual.

(ii) Investigation at Prosecutor's Initiative

If the prosecutor, while investigating other facts, or by chance, finds grounds to suspect that there is a corruption crime or offence occurring someplace, he or she can initiate an investigation by him or herself. Media allegations might be useful to allow this circumstance.

As a prosecutor is also a public official, the obligation contained in Art. 175 CPC also applies to him or her, so he or she must initiate an investigation in those cases.

(iii) Complaint filed by the Victim

Although victims can thus file complaints, the notion of a "victim" in corruption cases is not the same as that of a victim of a general crime, because the offence is not perpetrated directly against individuals, but against society as a whole, causing abstract damage.

Regarding corruption crimes or offences, they mostly cause detriment to public property, so a special organism was created to defend and represent the state's interest: The State Defense Council (SDC).

Before reform, the SDC was in charge of the public accusation in all corruption cases. The SDC is now confined to the role of plaintiff in two types of cases: those that are liable to cause the State and any of its agencies an impairment of resources, or those which involve criminal offences committed by government officials in office. Pursuant to Article 41 of SDC law and Instruction 29, prosecutors are required to inform the SDC within 10 business days, if a preliminary investigation starts concerning these cases. If the SDC wishes to file a lawsuit, it has the same rights and obligations as any other plaintiff and does not benefit from any procedural privileges.

3. Investigative Tools and Techniques

Basic investigative techniques available to prosecutors in corruption cases include creation of special investigating prosecutors and units; whistleblower protection; search and seizure; hearing of witnesses in Chile, a Chilean consulate abroad or a foreign court (if foreign bribery is investigated); the protection of witnesses; and restrictions on closing the investigations. Prosecutors can also ask the Court of Appeal for access to various "secret" administrative documents. Bank secrecy lifting and wiretaps are also available in certain circumstances.

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[8] As of December 2007, the value of the UTM was fixed at 34.222 pesos [USD 68.4].

[9] Article 173 CPC. Reports of such actions may also be filed with the police, or with any criminal law court, all of whom should immediately forward such reports to the prosecutor.

Special enhanced investigative techniques (undercover agents, informants, watched deliveries) are not available unless the main offence investigated relates to money laundering, drugs or terrorism.

(i) The Specialized Anticorruption Unit

The National Prosecutor set up the Specialized Anticorruption Unit (the "Specialized Unit'), in May 2003. This national multi-disciplinary unit is currently composed of eight lawyers, accountants and financial analysts. It assists, counsels and trains prosecutors investigating cases of corruption. The Specialized Unit also liaises with other agencies such as the Comptroller General, the State Defense Council and the police.

Another specialized unit is in charge of economic crime, money laundering and organized crime.

The Specialized Anticorruption Unit is permanently organizing workshops on different corruption issues, including the UNCAC, for prosecutors throughout the whole country.

(ii) Specialized Prosecutors

In addition to the Specialized Unit, 46 of the 669 new Chilean deputy prosecutors are specialized in cases of corruption, in the sense that such cases would generally be assigned to them, although they are not exclusively assigned to such cases.

(iii) Specialized Police and Investigators

The *Policía de Investigaciones de Chile* and *Carabineros de Chile* are the only police forces in Chile. Before the criminal procedure reform, they had extensive powers because judges largely delegated investigations to them. They now assist the Public Prosecutor's Office, and carry out investigative measures under the direction and responsibility of the prosecutor and provide him or her with their forensic expertise in investigations.

Both police forces have units specialized in economic and corruption crimes. Because legal persons as such cannot be criminally liable, investigations do not focus on them. The Police would try to identify the individual responsible for the offence.

(iv) Whistle-blowing and Whistleblower Protection

Chile has recently adopted a law that addresses the protection of government employees who report irregularities or breaches of the principle of probity.[10] This law focuses on the protection of people who report the lack of probity of Chilean officials. It does not apply to employees of state-owned and state-controlled companies, as State-owned companies are subject to the same labor code as private companies.

It has been less than a year that the law came into force, so it's not possible to make an evaluation of its functioning.

A few Chilean private companies have introduced whistle-blowing safeguards in their codes of conduct, but that is not mandatory for them.

(v) Witness and Victim Protection

As noted above, in corruption crimes there is no physical victim to identify, so the protection of victims does not exist in these type of cases. Nevertheless, witnesses may require some protection, so basic witness protection is available in cases of corruption, whereas enhanced protection is available in cases related to drugs, terrorism and money laundering.

The protection is organized by the Victims and Witness Support Division of the Public Prosecutor's Office and the corresponding regional units.

Protection can be granted from the preliminary investigation until six months after the trial. The level of

[10] Law No 20,205 of 24 July 2007, named "Protection to the public official who denounces irregularities and faults to the probity principle" (*Protege al funcionario que denuncia irregularidades y faltas al principio de probidad*).

protection decreases as the criminal process advances: for example, the witness can obtain protection of his or her identity at the beginning of the investigation, but only for 40 days. The identity of the witness cannot be secret at the trial stage because the CPC requires all witnesses testifying in an oral hearing to state their name (Article 307 CPC). The witness's place of residence can be kept secret. At the trial stage, protection must meet the additional criteria of the "seriousness" of the situation.[11]

(vi) Wiretaps

Generally, wiretaps are available only for crimes and not for misdemeanors. Although most corruption crimes have imprisonment sanctions, the provision also includes a disqualification from public office as a main sanction jointly with imprisonment sanctions.

The Public Prosecutor's Office has said to the courts that because this is a "main sanction" related to crimes, wiretaps should be available in these type of offences, and most of the Guarantee Judges have authorized them; but it's still not quite common.

Investigative actions that might restrict or affect constitutional rights, such as wiretaps, must be authorized by a Guarantee Judge (Article 9 CPC). It is easier to obtain an authorization from a Guarantee Judge in cases involving alleged violent crimes than in economic crime cases. Because money laundering investigations are subject to special rules, they appear to be generally exempt from this general trend, and where the authorization of the Guarantee Judge has been necessary, it has been obtained in most money laundering cases.

(vii) Bank Secrecy Lifting

Bank secrecy is one of the main problems encountered in Chile when investigating alleged acts of corruption and economic crime.

Bank secrecy is subject to a series of apparently overlapping provisions. Restrictions apply to the power of a Guarantee Judge to lift bank secrecy.

Article 154 of the General Banking Law distinguishes between bank secrecy and bank confidentiality. Bank secrecy covers a broad segment of banking operations, such as deposits and placements of any kind performed by the banks, and this protection extends to the movements and balance of current accounts, savings accounts, time deposits and other forms of placement. The remaining banking operations are subject to confidentiality.

Bank secrecy can be lifted by a Guarantee Judge in a corruption case, but the law imposes restrictions. The General Banking Law authorizes the prosecutor, with the approval of the Guarantee Judge, to examine or request the background related to "specific" operations that have been performed by someone formally charged and that have a "direct relationship" with the investigation. A second law, the Bank Current Accounts and Checks Law, also authorizes only the disclosure of "determined financial items" of a current account, at the request of a prosecutor and with approval of the Guarantee Judge.

For some types of offences and situations, Guarantee Judges have the power to fully lift bank secrecy and order full disclosure of potentially relevant bank information. Bank secrecy can be fully lifted by the Guarantee Judge in domestic corruption cases and other cases involving investigations against public officials for offences committed in the discharge of their duties; there is no requirement that the requests relate to specific operations or have a direct relationship with the investigation. Recent legislation has given the Financial Analysis Unit (FAU)[12] the power to obtain the complete lifting of bank secrecy from a judge where money laundering is suspected.

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[11] A "serious" situation requires that a major threat or danger be proven. The court requires that the prosecutor provides concrete evidence that the measure is necessary. The regional unit procures equipment to protect victims and witnesses in an oral hearing, such as folding screens which prevent visual contact between the victim and the accused, or closed television circuits which allow the victim and/or witness to testify in an adjoining room.

[12] The FAU is a constituent of the Ministry of Finance, although it is very independent. It is not related to the Public Prosecutor's Office.

In addition to or as a result of the legal limits on the lifting of bank secrecy in corruption cases, there appear to be significant practical hurdles relating to obtaining bank information. Bank secrecy constitutes, in practice, a major hurdle in economic crime investigations because of the evidentiary burden that must be met in order for a judge to lift bank secrecy (even partially). It can take several days or weeks for the Guarantee Judge to authorize the request of information because he or she requires a great deal of information before authorizing the request and defining the scope of the "specific" information permitted to be disclosed. It can similarly take a significant period to obtain the information from the bank.

(a) Distinction between bank secrecy and bank confidentiality

Banks may disclose the information associated with confidential transactions if a person establishes a legitimate interest provided that the bank considers that such disclosure has no negative impact on the customer's net worth. If the bank hesitates, as it may be likely to do in light of the potential liability and the uncertainty about the status of particular information as secret or confidential, the information can only be obtained with a judicial decision.

Responses to information requests to banks can take one or two months, especially when the bank is concerned about its customer relationship. On the contrary, the request is sometimes answered within a couple of days when a bank fully co-operates and does not require the intervention of the Guarantee Judge.

A bill currently before Congress, the Revised Bill on the Authorization of the Lifting of Bank Secrecy in Money Laundering Investigations, Bulletin No. 4426-07 (the "Revised Bill"), addresses bank secrecy, but only with regard to money laundering. For money laundering cases, the Revised Bill (Art. 4) would add a provision to Art. 154 of the General Banking Law allowing prosecutors, with the approval of a Guarantee Judge, to obtain access to "any information available or copies of any deposits or other investments or credit transactions made by any person, community, entity or de facto partnership under investigation, to the extent that such transactions, at the discretion of the Public Prosecutor's Office, may be connected with, or contribute to ascertain, the perpetration of such offences". A similar provision would relax bank secrecy, but again only for money laundering, under the Bank Current Accounts and Checks Law. These provisions appear to give Guarantee Judges the same power to fully lift bank secrecy in criminal money laundering investigations that they currently have for administrative money laundering investigations by the FAU and other corruption cases.

The access to financial information is of paramount importance for the effective investigation of corruption offences. Bank secrecy constitutes a significant barrier to effective investigation of these cases. The Revised Bill addressing bank secrecy is currently before Congress, but that at present only addresses the complete lifting of bank secrecy in criminal money laundering investigations, so corruption cases should maintain the restrictions named above.

The power of the Guarantee Judge to order access to bank information is significantly more restricted in foreign bribery cases, for example, than in domestic bribery cases and administrative money laundering investigations by the UAF. That's because of the punishment associated with that offence, which does not reach the legal requirements to allow the lifting of bank secrecy.

(viii) Restrictions on Closing Investigations in Corruption Cases

As written above, mandatory prosecution is the general rule in Chile so a prosecutor can decide not to initiate or to close an investigation only for reasons specified in the law. These include reasons such as the absence of evidence or a lapse of the limitation period (at the preliminary investigation stage), or the application of a general defence or the *non bis in idem* principle (at the formal investigation stage).

However, although mandatory prosecution is the general rule, there are a number of exceptions.

Under Art. 170 CPC, discretionary decisions to close an investigation (or not to open an investigation) are possible for certain crimes. (The same rules apply under Art. 170 to discretionary decisions to close or not to open a case in the first place.) Art. 170 is applicable to particular for crimes that do not seriously injure the public interest and carry a minimum penalty of less than 540 days. Most corruption crimes and offences are subject to a low level of sanctions, and accordingly, some of the offences potentially fall within the domain of Art. 170.

Instruction 29 provides some guidance with regard to the rules governing the early closure of cases, including under Art. 170 CPC. The Instruction (at 5) contains a general statement which indicates that the criteria for opening and closing cases apply to "offences committed by public officials when exercising their duties and those that affect public property and companies and entities in which the State participates or contributes" and includes a general list of offences of that nature. The Instruction states that prosecutorial discretion is generally excluded for cases of corruption, but the application of the law on issues such as prosecutorial discretion under Art. 170 CPC may depend on a factual and legal analysis of the nature of the participation of the public official.[13]

Under Art. 170, a prosecutor seeking a discretionary closure of a case is required to provide a reasoned decision to the judge who will notify any victims or intervening parties. The judge can overrule the decision to terminate, but only on narrow technical grounds or if the victim objects. Victims and intervening parties can appeal discretionary decisions to close the investigation to higher authorities in the PPO who verify whether the decision is consistent with general policies and applicable norms.

Investigations can also be suspended, such as when a prosecutor is lacking evidence or cannot investigate further unless new evidence appears. Instruction 29 requires that the regional prosecutor approves any suspensions, and that minimal investigative steps -- such as witness hearings or an expert's appraisal of the accounting situation -- are performed before a decision to suspend is made.[14]

As noted above, the formalized investigation commences once the prosecutor informs a person in the presence of the Guarantee Judge that he or she is being investigated for one or more offences. When the formalized investigation is complete, the prosecutor can formally accuse the suspect and ask for a hearing in front of the Guarantee Judge in order to prepare the trial. Additional alternatives to prosecution are generally available during or at the conclusion of the formalized investigation. First, prosecutors can propose the conditional discontinuance of the investigation to the Guarantee Judge (if the suspect investigated does not respect the conditions, the procedure restarts). Second, the suspect and the victim can agree on compensation of the victim unless the prosecutor considers that continuing the criminal procedure is in the public interest. Instruction 29 recommends that conditional discontinuance be used rarely and excludes compensation agreements for offences perpetrated by public officials or against probity. Nevertheless, as this last agreement is made between the victim and the defendant, it might occur even if the Public Prosecutor is against it, but always with the Guarantee Judge's authorization.

4. Mutual Legal Assistance (MLA) and Extradition

(i) Mutual Legal Assistance

The general CPC reform discussed above has had a significant impact on the MLA system. In addition, Art. 20 bis of the new CPC provides that foreign requests for MLA shall be handled by the PPO, which shall seek the intervention of a Guarantee Judge as necessary in the same manner as in domestic investigations.

This provision allows prosecutors to supply MLA directly in many cases; judicial intervention is only required in order to provide MLA where it would be required under domestic law, i.e. principally where fundamental liberties are at stake. The ability of prosecutors to provide MLA directly has greatly simplified and accelerated MLA procedures in many cases.

A new MLA unit was created in the PPO in 2004 in order to carry out the new MLA role. It both conducts relations with foreign countries and provides advice to domestic prosecutors on MLA matters.

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[13] Instruction 29 specifically prohibits the application of the principle of opportunity in the case of acts in which a public official has had any level of participation while exercising his or her duties. In this way, although the law does not exclude the application of the principle of opportunity for criminal acts in which public officials have participated, if their action takes place while not exercising their duties, it may be that the fact that they are public officials gives the act a connotation that seriously affects the public interest, or that by the mere penalty, the use of the authority conferred on the prosecutors in Article 170 [CPC] will not be in order. The Instruction does not attempt to apply these principles to the specific nature of foreign bribery or to foreign officials.

[14] Prosecutors can also ask for dismissal without prejudice to the Guarantee Judge, who can authorize it if the suspect is a fugitive, if a related civil action is pending, or because of the mental illness of the suspect.

The new unit is also now the central office for foreign countries seeking MLA. The general changes in the new CPC and the law of evidence have expanded the scope for co-operation including facilitating informal co-operation. Available statistics show a steep rise in instances of MLA in the last two years (from a low number previously).

The new role for prosecutors appears also to have lessened the importance of treaty-based MLA (and its attendant limitations given Chile's treaties). In fact, the absence of a treaty is not an impediment in many cases because MLA can be granted on the basis of reciprocity. The current system has been working effectively and further statutory intervention is not needed at this stage.

There has not been any relevant case law to date.

As discussed above, bank secrecy is a major barrier to effective investigation of economic crime in Chile. It is also a serious problem for MLA. There would not be any barrier to seizure and confiscation in response to an MLA request, but there have not been any actual cases to date. Prosecutors have responded to a number of requests for information about assets held in Chile. In addition, in one case, the Chilean authorities seized the assets of a foreign national in Chile.

(ii) Extradition

Article 431 CPC sets forth the criteria for active extradition and requires, *inter alia*, that the offence must carry a minimum prison sentence of at least one year. Regarding the Chilean foreign bribery offence, it does not meet this standard and active extradition is thus currently impossible under the Code provision.

For passive extradition, Arts. 449 CPC and 449 CPC require that:

- The crime or offence is one for which extradition is authorized under applicable treaties or according to international principles;
- The suspect should have been charged or condemned regarding a crime or offence sanctioned with a minimum of one year's imprisonment;
- The offence should be one for which extradition is authorized under applicable treaties.

(a) Case law

In early 2006, Peru formally requested that Chile extradite former Peruvian president Alberto Fujimori to face, *inter alia*, corruption charges in Peru. The Chilean authorities detained Mr. Fujimori and extradition proceedings have been underway. Because of the date of the relevant events, the proceedings are subject to the old criminal procedure code. In July 2007, the first instance judge denied the extradition of Mr. Fujimori, finding that the evidence submitted by Peruvian government was not sufficient to prove the facts argued in the extradition request. The Peruvian government filed an appeal on 13 July. The Supreme Court finally authorized extradition in September 2007, and at the time of writing, Mr. Fujimori is being tried in Peru. He has recently been convicted of human rights and corruption crimes.

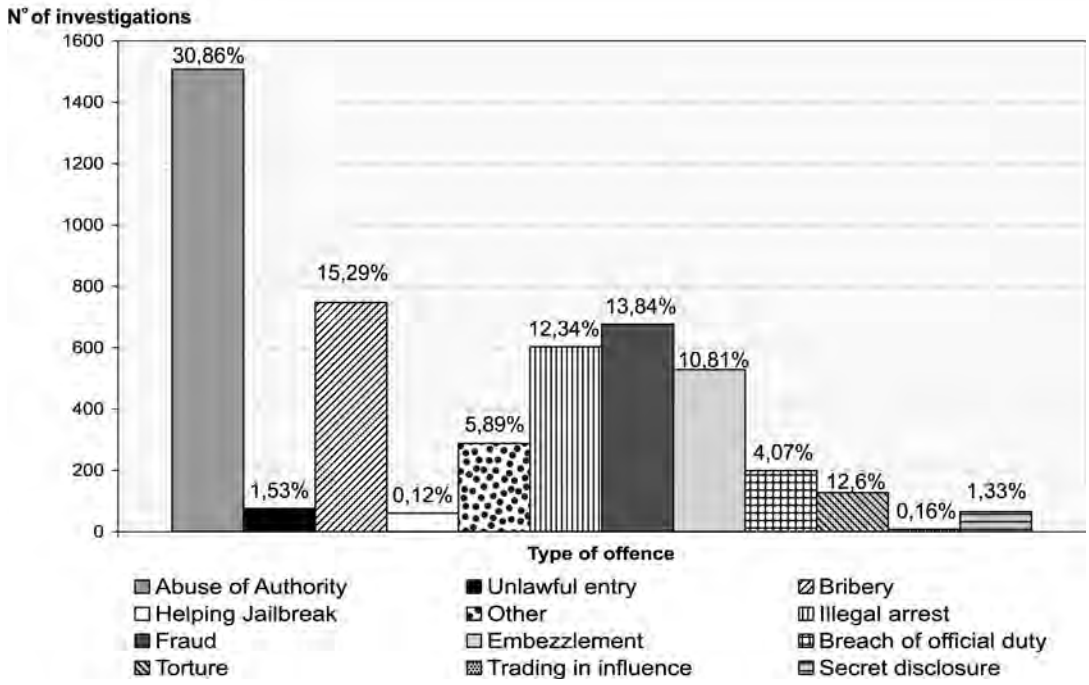
III. CASE LAW AND STATISTICS

A. Statistics

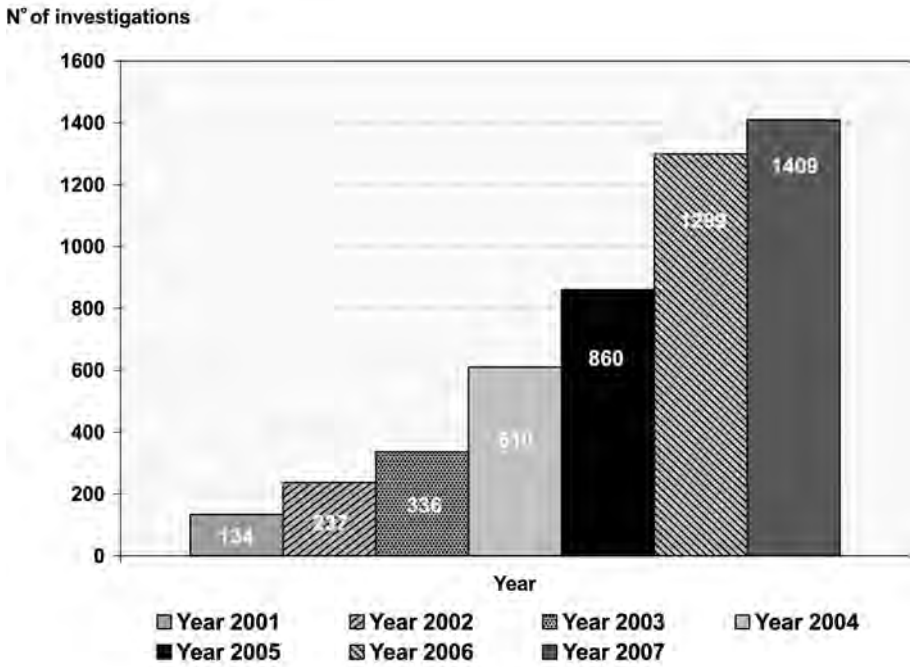
There have been 4,885 investigations opened since the implementation of the new Criminal Procedure Code, (from December 2000 to November 2007) regarding domestic corruption cases, and 3,755 of them have been completed.

Not all the initiated investigations are concluded by judicial ruling, because there are many other kinds of completions. Nevertheless, last year's statistics show that almost 30% of the initiated investigations ended with conviction, although none of them were a high level corruption case.

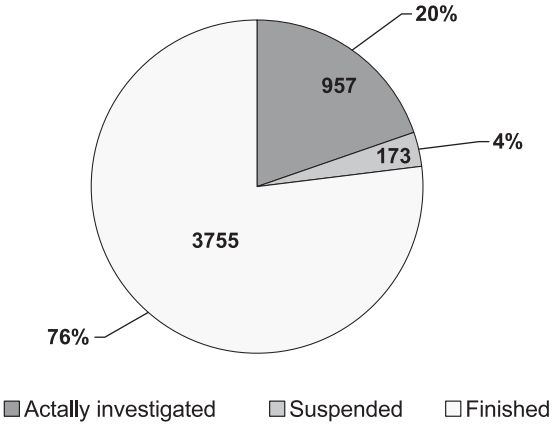
1. Types of Crimes And Misdemeanors Investigated 2000 – 2007: TOTAL 4885



2. Crime and Misdemeanor Investigations Initiated from 2000 to 2007: TOTAL 4.885



3. Current State of the Investigations



B. Case Law

1. Domestic Cases

There is no case law regarding high level corruption cases within the new Criminal Procedure Code; nevertheless, there are many investigations in progress, but which have not yet been concluded.[15]

Current investigations affecting high level corruption are being held by prosecutors, regarding:

(i) *Empresa de Ferrocarriles del Estado* (The State Railway Company), related with bribery, embezzlement and fraud; and
(ii) *Programas de Generacion de Empleo* (Labour Generation Program). This is a large-scale, complex investigation related to misappropriation of public funds which were apparently used to finance the political campaign of the current president of the republic and some congressmen, but none of them have yet been concluded. There will likely be a ruling in 2008. It has been formalized, and the oral trial is expected to start by the end of March 2008.

2. Foreign Cases

Regarding foreign bribery, no cases have been initiated since 2000.

IV. CONCLUSIONS

As a conclusion summary, it can be said that the criminal procedure reform in 2000 changed radically the course of investigations. Currently investigations run faster, and other agents, such as the Public Prosecutor's Office, have appeared.

The Public Prosecutor's Office is an independent organism, so deputy prosecutors can freely investigate without problems.

There is a high corruption perception index among the people; nevertheless, Chile is one of the less corrupt countries in the world, and the first in Latin America.

[15] In the old procedural system, there are a few important cases to mention:
- Former President Pinochet was suspected of committing embezzlement, public fraud and money laundering, but he died before being accused, so the case was closed. In this investigation, the judge had to travel to the United States to locate assets that should have been recovered;
- A civil servant who worked in the Copper State Company was convicted almost ten years after the beginning of an investigation into committing public fraud;
- Several investigations are currently held by court judges regarding the "*Caso Mop*", that affected the Ministry of Public Works, whose head was convicted of fraud. He appealed, and the case is still not concluded.

Sanctions for corruption crimes and offences are not very high, so some of them do not fulfill what's needed for extradition; legislative efforts should be made to raise the sanctions.

There are various tools and techniques focused on the specialized investigation of corruption crimes and offences. Mutual Legal Assistance can be requested directly from the prosecutors, even if there's no treaty between the countries, due to reciprocity.

There is no case law regarding high level corruption cases yet, since the new criminal reform started. Nevertheless, almost 3,755 domestic cases have been completed since then.