

House of Lords hears case for Pinochet's extradition

Our correspondent
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On November 4 and 5 the House of Lords heard the first two days of the appeal against the High Court decision granting immunity to former Chilean dictator General Augusto Pinochet.

The five-judge panel began by hearing the case presented by lawyers for the Crown Prosecution Service, which is also representing the extradition appeal by Spanish judge Baltasar Garzon that charges Pinochet with responsibility for the murder or 'disappearance' of at least 3,178 people under his rule.

The prosecution lawyers argued that England's 1978 State Immunity Act, under which Pinochet's arrest was quashed, was superseded by international conventions to which Britain is a signatory. There is a universal jurisdiction for 'crimes against humanity,' the lawyers argued, and they can be tried anywhere. Moreover, international law does not recognise immunity for high officials accused of them. Lawyers also argued that some of the crimes Pinochet is charged with occurred before he declared himself as Chile's head of state and before constitutional changes ratified this.

Christopher Greenwood, for the Crown Prosecution Service, said rulers could not be immune from prosecution because of their official status. 'The conduct in question is conduct which is stigmatised as criminal under international law.... Crimes against humanity, including torture and hostage-taking, were well established as crimes in international law before the military regime took power in Chile in 1973.'

It did not matter whether the victims are one's fellow countrymen, said Greenwood, citing the conviction of those who had served in Nazi Germany's foreign and justice ministries for crimes against humanity, including the ill-treatment of German nationals. 'The defendants were high officials who clearly acted with the color of official authority, yet no claim of immunity

was made.'

Alun Jones, the Crown Prosecution Service lawyer representing the Spanish authorities, argued that it was a "repugnant notion, offensive to all notions of human rights" to categorise genocide and torture as having been committed "in the course of official functions as head of state.... It is the argument of the Spanish authorities that the savage and barbarous crimes committed in Chile and the territories of other states including the USA, Spain and Italy are not within the functions of a head of state in English law, the law of nations or the law of Chile.... Our argument can be put in one sentence. It is no part of the functions of a head of state recognised by English or international law to behave like that."

Jones said Pinochet headed a military coup on September 11, 1973, then oversaw 'a most ferocious oppression', until he gave up the presidency in 1990. He alleged there was a criminal and systematic plot to execute people, 'for political objectives'. He also questioned whether Pinochet could be considered a legitimate head of state at various points during the period when the crimes were committed.

Specifically, he asked whether Pinochet could rightly claim to have been head of state in the months after he violently deposed President Allende in September 1973. The distinction was important, said Jones, because 28 people had been kidnapped, tortured and executed on the first day of coup. Even if Pinochet has immunity for tortures and killings carried out in Chile, he remained legally responsible for killings of opponents in other countries.

Jones also argued there were many examples of torture after 1984, when the UN Convention on the Suppression of Torture was introduced, and after September 1988, when the Criminal Justice Act was

enacted.

Pinochet's counsel, Clive Nicholls QC, rejected Jones's argument, saying, "There's no suggestion that anyone else was head of state at this time." He protested against the admission of new evidence from the Spanish government, on the grounds that it did not figure in the High Court decision being appealed. He argued that the case must be decided solely on the basis that Pinochet was head of state at the time, and that to do otherwise would be in breach of House of Lords rules.

Witnesses do not usually appear before the House of Lords. The Law Lords only hear arguments from lawyers for the two opposing sides. But in the face of widespread opposition to Pinochet's release, the Law Lords agreed to admit arguments on behalf of Amnesty International, the Redress Trust, the Medical Foundation for the Care of Victims of Torture, the family of a disappeared Anglo-Chilean, William Beausire, and a British torture victim, Dr. Sheila Cassidy.

Their lawyer, Professor Ian Brownlie, an authority on international law, argued, 'English public policy is clearly against recognising immunity for ... the torturous causing of deaths."

The hearing was adjourned until Monday, when Pinochet's lawyers will begin his defence.

On Friday, November 6 the Spanish government approved Judge Garzon's request for Pinochet to be extradited from Britain, after the earlier endorsement of Spain's National Court. The court had ruled that there are grounds to try Pinochet for genocide because he allegedly tried to eliminate an entire group of people--his political opponents. Under Spanish law, genocide can be prosecuted wherever it occurred. Foreign Minister Abel Matutes said, 'We understand that this is a delicate matter which must be treated with prudence. But most importantly it is a judicial matter. We have to respect the law and the decisions of our judges, whether it pleases the government or not."

Alleged victims of his rule in Sweden, France, Germany, Italy, Switzerland, Belgium and Luxembourg, as well as Spain and Britain, have now requested legal moves against Pinochet. In Germany, four more complaints were filed against Pinochet on Thursday, bringing the total complaints to seven, involving nine individuals. French Justice Minister

Elisabeth Guigou has asked the Jospin government to push for Pinochet's arrest if he leaves Britain and stops in any other country on his way back to Chile. Human Rights Watch has asked the European Court of Human Rights to request that Britain continue to detain Pinochet pending an appeal to the European Court.

See Also:

Relatives of Pinochet's victims speak to the *World Socialist Web Site*

[6 November 1998]

Political lessons of the Chilean coup:

Statement issued by the Fourth International on September 18, 1973



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