

Law Lords overturn earlier decision refusing Pinochet 'sovereign immunity'

Fresh appeal in January could set the dictator free

Our correspondent
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A specially constituted Law Lords panel has rescinded the earlier House of Lords ruling denying former Chilean dictator General Augusto Pinochet 'sovereign immunity' from arrest and extradition to Spain. This decision means that a new hearing of the appeal case will be held mid-January.

The panel was made up of five senior Law Lords: Lords Browne-Wilkinson, Hutton, Hope, and the recently retired Lords Goff and Nolan. It unanimously accepted the argument of Pinochet's defence team that links between Lord Hoffmann, one of those who made the original decision, and the human rights organisation Amnesty International meant there was 'a real danger of bias' over the verdict pronounced November 25.

Hoffmann is a director and chairman of Amnesty International Charity Ltd (AICL) and his wife has worked as a clerical assistant for Amnesty International for 20 years.

Clare Montgomery, QC, opened an unprecedented application to set aside a decision by the Law Lords on the grounds of bias. No procedure existed for this and a special panel had to be created. She argued that Lord Hoffmann was under an obligation to declare his links to Amnesty International stretching back to 1982, when he represented it in an appeal against the Charity Commissioners. In 1986 Hoffmann became a director of Amnesty International Charity Ltd and later became its chairman.

Montgomery said Hoffmann's relationship with the human rights group was 'a long-standing, deep-rooted family connection' and that his work in a voluntary capacity 'might give rise to a perception of bias'. In 1993, while Hoffmann served as a director, AICL paid for a report on Chile that made 'reference to the

Pinochet years and expresses plain and unequivocal views on what happened', said Montgomery.

To reinforce this argument, Hoffmann was described as 'an active and hostile interrogator' who had frequently supported arguments by lawyers for the Spanish government and Amnesty International. The organisation had been allowed to make its own presentation to the earlier hearing, and was therefore 'a protagonist', said Montgomery.

The appearance of bias, not proof of actual bias, is enough to poison due process in English law, as laid down by the Lords (R v Gough, 1993) and endorsed in the European Court of Human Rights. Montgomery argued that Gough has hitherto been wrongly interpreted in England as requiring 'actual though unconscious bias' and that the Law Lords should come into line with the judicial system in Australia, Canada and Scotland, where a 'real suspicion' of bias is sufficient.

Montgomery concluded that Pinochet had been denied the right to a fair trial before an impartial tribunal, as defined by Article 6 of the European Convention on Human Rights. This states: 'Any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw.' As a 'director of a company seeking to procure an end to torture and extrajudicial murders' Hoffman 'would be predisposed to find that no state immunity can attach to these acts,' she said.

In its submission opposing Pinochet's appeal against the November ruling, the Crown Prosecution Service wrote, 'The petitioner's case is tantamount to asserting that a judge who supports 'human rights' must be disqualified from cases where human rights are

involved."

Alun Jones, QC, for the Spanish Government, said, 'If there had been an objection, what they would really have been objecting to was not his association with the charity, but the view he is perceived to take on questions of human rights. Once that objection starts being entertained, lawyers on the other side might start taking exception to Lords X or Y. It's a potentially anarchic situation.'

Peter Duffy QC, for Amnesty International, argued that Hoffmann's links with the organisation were both well known and limited to a charitable role. All judges have attitudes and views, and hostility to torture and extra-judicial detentions and executions are 'aims which all members of the judiciary would support'. Moreover Hoffmann had delivered judgements that were contrary to Amnesty International's policy, such as one in favour of deporting someone to the Caribbean to face the death penalty.

The chairman of the panel, Lord Browne-Wilkinson, responded by exclaiming, 'Touché, Mr. Duffy. I have just realised I am a governor of the British Institute of Human Rights.' But he rejected the broader argument. He declared on Wednesday that the burden was on the judge to disclose the facts. 'Otherwise we're ditching the first thing I ever learned about English law--justice must not only be done but seen to be done.'

Hoffmann's failure to declare his association with Amnesty International is at best extraordinarily inept. Moreover his association was known amongst all his colleagues. It has provided a near-perfect legal pretext for Pinochet's attempts to evade extradition. Pinochet's legal team were fully aware of Hoffmann's connection with Amnesty International and had even responded to an appeal for a donation to the charity earlier this year made in a letter that noted his position as chairman. It is widely believed that they chose not to object to his sitting in judgement because this could provide them with the basis for challenging an unfavourable verdict. Plans to do so were announced even before Home Secretary Jack Straw had granted 'authority to proceed' on Spain's extradition warrant.

The extraordinary verdict given by the High Court on October 28, upholding Pinochet's 'sovereign immunity' as a former head of state and thus absolving him of legal responsibility for crimes of genocide, could now be reinstated in January. The same five judges who

quashed the November 25 Law Lords ruling may well be the ones to hear the fresh appeal next month. For the first time, as well as other European countries also seeking Pinochet's extradition, the Chilean government will be able to make official legal representation at the January hearing.

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