

Prosecution argues for international law at Pinochet hearing

Julie Hyland
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Prosecution lawyers have continued giving evidence to support the extradition of General Augusto Pinochet before Law Lords in London.

Professor Christopher Greenwood is dealing with the international issues of law raised by the Spanish authorities' extradition request. He told the court earlier this week that international law was a "living and expanding code", which in the course of the twentieth century had come to recognise that there could be no immunity from prosecution for certain grave crimes, regardless of an individual's rank. Torture is an offence under international law, he argued, and not even a head of state could be immune from prosecution.

The "idea that acts of an official character can only attach to the state, and cannot attach to the individual, is a theory which is thoroughly unfounded when you are dealing with acts of torture, hostage taking or genocide," Greenwood said. Admiral Karl Doenitz, head of the German state for just 10 days at the end of World War II, had been prosecuted at the Nuremberg Trials. Doenitz was imprisoned for war crimes, even though he had negotiated Germany's unconditional surrender.

The idea that a state could treat its people in any way it saw fit "belongs to the era before Auschwitz and Treblinka, before the Nuremberg judgement, and long before the Torture Convention" of 1984, Greenwood went on. Even before General Pinochet's coup in 1973, international law had prohibited torture as an instrument of state policy, he added, and a 1919 commission into responsibility for war crimes committed during World War I had established the principle that a head of state enjoyed no "fundamental immunity".

On Monday the Law Lords heard that 11 years ago Chile had signed away any rights Pinochet had to claim

immunity from prosecution abroad when, with the general still president, the country ratified the International Convention on Torture in 1988. Alun Jones, QC, for the Crown Prosecution Service (CPS), added that torture had been forbidden by the Chilean constitution since 1925. Jones said that Chile's inclusion of the International Convention meant that it had signed up to a convention recognising that torture was "internationally punishable".

Greenwood developed this argument during the course of his two-day presentation, which sought to establish that national courts had jurisdiction over internationally recognised human rights violations. Pinochet's defenders, which include the Chilean government, have denounced Spain's extradition warrant as a gross infringement of the country's national sovereignty. Greenwood argued that the agreements that established the Nuremberg tribunal following World War II had acknowledged that the vast majority of allegations of war crimes would be prosecuted by national courts. Accordingly some 2,000 trials of war criminals were held in national courts across the world, and at no point was it suggested that the leading defendants at Nuremberg would have had immunity before a national court.

Although there does not exist an international tribunal to try people accused of human rights abuses, there was "the very clearest guidance" that, especially since 1945, national courts had increasingly been asserting jurisdiction over crimes such as torture.

Lord Browne-Wilkinson, chair of the panel, indicated the direction being taken by the Law Lords in several interruptions. At one point he told Greenwood that he would have to demonstrate the point at which a "developing legal trend" could be deemed to have actually entered into international law. "This case is

going to turn more and more on that point," Browne-Wilkinson said. Referring to Greenwood's argument that national courts could claim jurisdiction, the Law Lord stated that he did not consider the case a matter of national jurisdiction, but rather of whether, under English law, General Pinochet is entitled to immunity as a former head of state.

English law currently guarantees heads of state immunity from prosecution for any actions they carry out in that capacity. As earlier hearings have already established, even Adolf Hitler would have enjoyed the protection of the English crown on this basis. The now overturned earlier 3-2 ruling by the Law Lords against the general had threatened this protection. It appears that the new Law Lords panel is ruling out any questioning of this provision.

Instead the case is turning on the issue of Pinochet's official status at the time some of the crimes he is accused of were committed. Earlier this week, the Law Lords had instructed the CPS to seek information from the Foreign Office as to the exact date Britain had officially recognised Pinochet's military junta. A letter to this effect, the text of which was approved by Pinochet's counsel, was sent on Wednesday. The Foreign Office has so far declined to comment, responding only that they will make any response directly to the court.

It appears likely that it will be the "date issue"--and not matters of torture and murder--that will decide Pinochet's fate in court. If it can be proven that Pinochet was almost immediately recognised as head of state following the coup, then the Law Lords could dismiss the extradition warrant.

The prosecution has largely adapted their legal case to these flagrantly undemocratic criteria. The opening days saw the CPS emphasise allegations that Pinochet had been involved in a conspiracy to torture opponents even before the coup. Jones stated that in August 1973, a number of people were tortured at a naval base in order to keep secret the coup plan. On the day of the coup, at least 20 people were seized, tortured and probably killed before the general was formally declared the head of the junta that night.

So sharp was this shift that it appears to have even taken the Law Lords by surprise. On Tuesday Browne-Wilkinson asked Jones to prepare a document that would outline his "heavily revised case". The Law

Lords have insisted on documentation of Pinochet's alleged pre-coup conspiracy.



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