

Britain's Home Secretary considers freedom for Pinochet

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On Monday, lawyers for former Chilean dictator Augusto Pinochet were empowered by the High Court to challenge Home Secretary Jack Straw's decision last December to authorise extradition proceedings against him. Pinochet faces extradition to Spain on charges of murder, torture and other crimes against humanity.

The application was adjourned until the first available High Court date after April 15, however, to give Straw sufficient time to reconsider whether or not to issue a new authority to proceed.

At the 90-minute hearing Pinochet's QC, Clive Nicholls, argued that the Authority to Proceed on Spain's extradition warrant, issued in December by Straw, was "unlawful" because the Law Lords had decided he had "misdirected himself".

By a 6-1 majority, the Law Lords last week called for the dictator's case to be reconsidered as they drastically reduced the number of human rights charges on which he could be extradited. They ruled that while Pinochet did not have blanket sovereign immunity, he was immune from extradition for any crimes committed up to December 8, 1988, when the International Torture Convention became binding on Britain. This legal technicality cut the 32 original charges against him of conspiracy to murder, hostage-taking, torture and conspiracy to torture to just two charges of conspiracy to torture and one of torture.

This has provided Straw with a possible means to extricate himself from his present predicament, in which he has found himself the reluctant custodian of Pinochet's fate. The High Court decision to delay matters until April 15 did not meet significant opposition from Pinochet's lawyers, due to the heavy signals from Straw that he wishes to abandon his previous decision and allow Pinochet home to Chile.

Straw's QC Jonathan Sumption said the Home

Secretary wished to reconsider the case and hear submissions from the opposing parties "with a blank sheet of paper". He made clear that whether extradition moves should continue was in question. Sumption told the High Court, "The Secretary of State will wish to be able to reconsider the matter afresh in the radically changed situation which now exists."

A stay until April 15 would be in order for "the Secretary of State to reconsider the decision, not simply so as to consider the reduction in the scope of the extradition proceedings which arises from the decision of the House of Lords, but to consider whether, in the light of that reduction, it would be right to issue an ATP [authorisation to proceed] at all."

He added that Straw needed clarification that he was entitled in law to revoke his earlier decision, and replace it with a fresh one, without facing further "interminable litigation in a case which has already seen its fair share of that".

Although Sumption was at pains to stress that Straw had not decided that extradition should be rejected, there could be no clearer indication of his desire to do so. The Law Lords decision was custom-made for this end. The legal and political establishment has demonstrated again and again that it wants Pinochet, a long-time British ally, to go free. As soon as the verdict was announced, former Conservative Prime Minister Thatcher organised a high-profile luncheon with the general at his Surrey retreat, where she stressed her desire for his release. But several political factors had to be taken into account, including the widespread demand internationally for him to be brought to justice.

Another major consideration was to safeguard the recent claims by the Blair government that it has an "ethical foreign policy".

Britain has united with America behind claims that

two wars against Iraq, the bombing of the Sudan and now the NATO action against Serbia are being carried out with the aim of combating dictatorships and human rights abuses. It would have undermined all attempts by Britain and its allies to justify imperialist intervention against sovereign nations if sovereign immunity had been accepted as the major defence of Pinochet for his crimes. Moreover, for Pinochet to be allowed to walk free without qualification, under conditions where Britain is shelling Belgrade supposedly to punish Milosevic, would prove an acute political embarrassment.

This concern was indicated in an *Observer* editorial, which cautioned, "Cynics have dismissed it as propaganda and mere posturing. Still, the official justification of the Nato offensive in the former Yugoslavia is that dictators should no longer be free to kill and maim without fear of international reprisal. That principle shall be tested again today--not only in the skies over Belgrade but also in the sombre chambers of the High Court."

The Law Lords decision, rejecting Pinochet's claim to sovereign immunity while seeking to undermine the extradition case, was meant to bridge the gap between these various concerns. But difficulties still persist for Straw. Firstly, the transparent character of any decision to free Pinochet on the basis of a 1988 cut-off was immediately exposed by Spanish judge Baltasar Garzon, who expanded his existing extradition petition against Pinochet with 32 additional cases of torture dating from after 1988. Secondly, those throughout the world who cheered the Law Lords' rejection of sovereign immunity as a "victory for human rights" would respond angrily in the event of the British legal and political system allowing Pinochet to return to Chile.



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