

Efforts stepped up in Spain to prevent trial of Chilean dictator Augusto Pinochet

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18 August 1999

Strenuous efforts are now under way to ensure that Chilean dictator General Augusto Pinochet avoids having to stand trial in Spain. The final court hearing to decide whether Pinochet can be extradited from Britain to Spain is due to take place in London on September 27.

Pinochet was arrested in London on October 16, 1998 on an extradition warrant from the Spanish judiciary. The warrant sought to bring charges against Pinochet for the murder or "disappearance" of more than 3,100 Chileans and foreigners during the general's military coup in 1973 and the subsequent 17 years of dictatorship. However, last March the British judiciary restricted the possible grounds for extradition to only those cases alleged to have occurred after December 1988, the date Britain ratified the UN Convention against Torture, thus drastically reducing the applicable charges.

The case against General Pinochet has exposed deep divisions within the Spanish judiciary and ruling circles. Although the extradition warrant against Pinochet was issued from Spain—by Baltazar Garzon, an investigative magistrate at the National Court—the state prosecutor's office at the Court has consistently opposed the action. One prosecutor, Pedro Rubira, has forced these divisions into the open in recent weeks, following efforts to present a legal challenge against the dictator's extradition.

In his report, Rubira compared the general's legal status with the immunity guaranteed to the Spanish King; Pinochet's defence lawyers employed the same "sovereign immunity" argument in London. Rubira went on to claim that the lengthy wrangling in London over the legality of the original arrest warrant meant Pinochet should be released from house arrest immediately. Rubira also questioned whether the charges against Pinochet would stand up in a Spanish court, as its laws on torture only apply to actions committed during police investigations to extract confessions and not when used as an instrument of terror, as in Chile.

Rubira has the backing of significant sections of Spain's military brass, politicians, corporate directors and lawyers.

Another state prosecutor, Eduardo Fugairiño, has on several occasions made statements in favour of Pinochet's policies. Back in October 1997 he caused a scandal when he attempted to justify the Chilean and Argentine dictatorships. He described them as "a temporary suspension of the constitution" for the purpose of re-establishing order. Fugairiño undoubtedly applies the same logic to Franco's 36-year fascist dictatorship in Spain (1939-75).

The National Court has so far stood by Judge Garzon, but Pinochet's supporters in Spain have joined forces with similar right-wing forces in Britain and internationally to step up their campaign for the dictator's release.

Following publication of Rubira's report, a delegation of Chile's high-ranking military officers visited Spain to mediate on the general's behalf. The Spanish and Chilean governments have held talks on the latter's proposal for "friendly international arbitration" over the case, as an alternative to extradition.

Significantly, the right-wing Popular Party government of Jose Maria Aznar agreed to consider the request. It argues that this conciliatory gesture is dictated by concerns over the internal situation in Chile in the run-up to presidential elections in December. It points to rumours of a possible military challenge to civil power if the decision goes against Pinochet, and a further deterioration in relations between the two countries.

In a parallel move, the new Chilean Foreign Minister, Gabriel Valdes, held a meeting in Washington with Secretary of State Madeleine Albright in an effort to ensure the US government's backing for his proposal of an extra-judicial arrangement, i.e., some form of international arbitration.

Pinochet himself mooted the idea of submitting voluntarily to the Spanish authorities before the extradition process restarts on September 27, to "shorten the process". But this was described by Spanish lawyers as "absurd and suicidal", since it would mean Pinochet facing the full charges levelled by judge Baltazar Garzon, instead of responding to the reduced charges authorised by the British Law Lords.

Even if he lost the extradition battle, Pinochet could only be extradited to Spain for the torture of Spanish citizens, according to the definition of the International Convention subscribed to by Britain in 1988. This would amount to absolution, since in the period between 1988 and 1990 (the date Pinochet left office), no *Spanish* citizens were tortured.

Some opposition parties in Spain have called for the dismissal of the prosecutors involved. The Catalan nationalists (CiU), which normally back the government, have described Rubira's report as "a disgrace for Spain" and demanded an emergency parliamentary session so that the General State Prosecutor, Jesus Cardenal, can explain the position of his office.

The political-judicial controversy deepened when Judge Garzon demanded that the Spanish government release all information about the extra-judicial negotiations in relation to his brief, and state what documents relating to the case have been handed over to the Chilean government. The Spanish government countered by claiming that it had limited itself to giving "statutory process" to the Chilean petition of arbitration "because no other course is open to us", but that its intention was "to continue supporting the judicial road".

An article written by Spanish Foreign Minister Abel Matutes, published in the Chilean newspaper *El Mercurio* on July 11, contradicts these assertions. Matutes reveals that the Spanish government "agreed to officially transfer" to the Chilean government "all the available information" it had requested "about the actions of the prosecution office in its opposition to the judge's [Garzon] steps, together with their alleged reasonings".

Matutes said that Spanish-Chilean relations have been disturbed by the demand for Pinochet's extradition. The Spanish government, he added, has repeatedly expressed its concern to the people of Chile that relations between the two countries should remain fraternal. Matutes feared "the possible repercussions on the difficult balance that sustains every process of political transition, especially those which the Chilean people have so wisely taken in their exemplary road of return to the democratic system".

He details what the government and other state institutions have done to limit the damage to Spanish-Chilean relations caused by a purely juridical action "outside of the sphere of government competence". To justify this he quotes the Spanish Constitution established in 1978, which separates the legal from the political fields. He makes clear that Madrid has been helping the Chilean government by supplying information on the actions of the prosecution and all the arguments of the government in opposing it.

The Spanish government also promised that Pinochet would be treated with "impartiality" should he be extradited.

Finally, Matutes assured the Chilean government that Spain will respect the decision of the British government if it interrupts extradition for humanitarian reasons and allows the transfer of Pinochet to Chile.

(One senior British barrister, Queen's Counsel Jonathan Sumption, has advised Home Secretary Jack Straw to ask the Spanish authorities for the withdrawal of the extradition demand. He argues that if Spain did not accede to Straw's petition, the Minister, using his discretionary powers, could order Pinochet to be freed on the grounds of the former dictator's supposed ill health. According to the *Independent* newspaper, Straw has already asked for legal advice regarding what he could do if the dictator suddenly became very ill.)

"With this position," Matutes continued, "the government has covered all the aspects of the political manoeuvres that the Constitution allows it and it has done so in the full understanding of the possible political cost which this could bring in terms of a portion of Spanish public opinion."

Spain, Matutes says, cannot but be especially sensitive to the issues raised by Pinochet's detention. This is true. Pinochet's coup in 1973 helped convince the Stalinists and social democrats in Spain that they had to make peace with the military and the fascists. When Spanish dictator General Franco died in 1975, his regime was replaced by a bourgeois democracy in a process brokered by the Communist Party of Spain (PCE) and the Socialist Workers Party of Spain (PSOE). In 1978, a new Constitution was agreed by all parties guaranteeing the preservation of capitalist property relations, and granting a general amnesty to the fascist butchers.

The PSOE played the principal role in advising the Socialist Party of Chile in ensuring a similar "peaceful transition to democracy" in 1990. In both countries, the labour and trade union bureaucracy were instrumental in preventing a settling of accounts with the dictators and their backers. Today, both Chile and Spain fear any discussion in Parliament and the courts that raises questions regarding the transition to bourgeois democratic rule.



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