

London High Court considers moves to release Pinochet

Richard Tyler
27 January 2000

A hearing before the High Court in London opened Wednesday to consider moves by Home Secretary Jack Straw to release the former Chilean dictator, General Augusto Pinochet.

The request for a judicial review was lodged by a coalition of six human rights organisations, including Human Rights Watch (HRW), Amnesty International (AI), the Redress Trust, the Medical Foundation for the Care of Victims of Torture, the Association of the Relatives of Disappeared Persons and Justicia.

According to HRW, "The application seeks an independent examination of the medical basis for any decision regarding the former Chilean dictator's fitness to stand trial." HRW Executive Director Kenneth Roth said, "If Secretary Straw does not permit public, adversarial proceedings, we hope the courts will order such a hearing."

Amnesty International said, "It is in the public interest to ensure that the procedure used to determine whether a person is fit to be extradited or to stand trial is conducted in a fair and transparent manner. We believe this has not been the case in this instance and will be presenting our arguments to the High Court."

If the High Court grants the request, the general's release could be delayed indefinitely until the review process has been exhausted. This would involve a full hearing at the High Court. Any decision there could be subject to a further appeal before the House of Lords, before the matter landed back on the Home Secretary's desk.

Earlier this month Straw said he was "minded" to release Pinochet on grounds of ill health, but he has yet to announce an official decision. On January 12 Straw told Parliament that in weighing whether to halt the extradition he had considered "whether Senator Pinochet would be in a position to follow the

proceedings, whether he could give intelligible instructions to those representing him, and whether he could give a coherent statement".

Dr. Robert Howard of the Institute of Psychiatry at the Maudsley Hospital in London last week queried whether the doctors who had examined Pinochet could have competently reached a diagnosis of dementia. "Dementia is a big diagnosis. It's a chronic, irreversible condition, and you need to examine the patient at two points in time, or at least have reliable witness accounts that his condition has been like that at two points."

As a state with an outstanding extradition request against Pinochet, the Belgian government has also instructed its legal representatives in Britain to request a judicial review of any decision Straw might announce. Their extradition case is based on evidence submitted by Chilean refugees presently living in Belgium who were tortured during Pinochet's reign of terror. The Belgian authorities are demanding that a new medical examination take place "on an independently verifiable basis".

According to Belgian officials, letters written last week from a Belgian examining magistrate to Straw, and a supporting letter from Belgium's foreign minister to his British counterpart Robin Cook, calling for Pinochet to be examined in the presence of a Belgian doctor have remained unanswered.

Louis Michel, the Belgian Foreign Minister, told *Le Soir*, "One cannot lodge two requests for extradition and then not employ all possible legal means to try to obtain them. We want dictators past and present to know that one day they will be caught." Belgian authorities say their requests to see the medical evidence should have been allowed.

Michel was further quoted saying that if their High Court bid failed, Belgium would not take the case to the

International Court in The Hague, as had been reported earlier in some newspapers. "If we went further it would become a political problem between two European countries and I do not want that," Michel said.

Presiley Baxendale QC, for the Belgian government, told the High Court judge it was "a breach of natural justice if Belgium could not make meaningful representations because they could not see the medical records. It was irrational because at one and the same time the Secretary of State was asking Belgium to make representations and refusing to disclose the details of the report. There was no overriding principle of medical confidentiality. That was only one factor to be taken into the balance and could be overridden by the interests of justice."

Richard Drabble QC, for the six human rights groups, said, "We say the issues raised are of fundamental importance, both as to the integrity and transparency of the international criminal justice system, and—the matter with which we are particularly concerned—procedures under which the rights of victims of torture are to be decided." Drabble said the Home Secretary could allow the extradition to proceed and place the onus on Pinochet to prove whether or not he was fit to stand trial when he got to Spain.

Jonathan Sumption QC, appearing for the Home Secretary, rejected the Belgian authorities' claim that their letters requesting sight of the medical report had not received a reply. He said their initial letter on January 19 had had a response, but admitted a second letter received more recently was still "under consideration".

However, the country whose judiciary sparked the extradition case against Pinochet has not joined the action at the High Court. Spain has prohibited its legal representative, Alun Jones, from attending—an action which the Spanish daily *El Pais* compares to Manchester United Football Club playing without their star striker David Beckham. The same article suggested that Spain's action is likely to be a deciding factor for Straw, because Amnesty International and the other human rights organizations do not have the status of a country, and Belgium has not been so deeply involved in the case as has Spain.

Two lawyers working with the Spanish judge, Baltasar Garzon, whose arrest warrant initiated the

extradition proceedings against Pinochet, said that the Spanish Foreign Ministry has refused to pass on a letter from the British Crown Prosecution Service asking the Spanish judiciary how to proceed should Pinochet be released. Their allegations have been met by threats from the Spanish government to sue them.

Since France and Switzerland, both of which have outstanding extradition warrants against Pinochet, intend not to contest any decision finally reached by Straw, the latest manoeuvres by the conservative Spanish government could open the way for the British Home Secretary to release Pinochet, a move that would be no less welcome in ruling circles in London and Madrid than in Santiago.



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