

British High Court rejects challenge to stop Pinochet's release

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1 February 2000

The High Court in London has rejected a legal challenge to the Home Secretary's intention to halt the extradition proceedings against the former Chilean dictator, General Augusto Pinochet.

Six human rights groups and the government of Belgium had submitted a request for a judicial review of Jack Straw's announcement January 11 that he was "minded" to stop the extradition process, a decision that would effectively free Pinochet. Although Straw had invited submissions concerning his intention, he refused to divulge the medical evidence on which he based his decision, claiming it was covered by "patient confidentiality".

Following the High Court rejection, Belgium filed an appeal, which will likely be heard before a panel of High Court judges early next week. Until then, the ex-dictator remains under house arrest and Straw will not take any substantive action regarding his release.

The main thrust of the application for judicial review was that in refusing to disclose the medical reports, Straw was being unfair to those seeking Pinochet's extradition and had breached the principles of natural justice. The organisations argued that the refusal to disclose the medical evidence meant they were unable to challenge its findings. Furthermore, the examination was "cursory" and they questioned the choice of doctors who examined Pinochet. In particular, they cited that there was no specialist in old-age psychiatry competent to reach a diagnosis of senile dementia.

The request for a judicial review was also supported by Belgium, which along with Spain, France and Switzerland has an outstanding extradition warrant against Pinochet.

BBC radio described the decision as a "complete and unequivocal defeat for both Belgium and the six human rights groups".

In turning down the application for a judicial review, Judge Maurice Kay said he was "completely against" any disclosure of the medical report and was "entirely satisfied the Home Secretary has acted fairly, lawfully and rationally in the consultation process." "Submissions to the contrary are not arguable," the judge added.

The judge dismissed the human rights organisations' request for access to the report on Pinochet's health, saying it was "none of their business".

The ruling was described by Wilder Tayler, General Counsel for Human Rights Watch, as "an unfortunate setback to principles of justice." Wilder said, "Jack Straw carries a huge historical responsibility to reach a decision that is just and respects the rights of Pinochet's victims and their families."

Mark Lattimer, Communications Director of Amnesty International UK, said, "We took action in court in an effort to ensure that all decisions in the extradition proceedings are reached in a fair and transparent manner. Throughout the proceedings we have called for justice, not politics. Justice must not only be done, but must be seen to be done."

The human rights groups are still deciding whether to appeal against the refusal to grant them a judicial review.

The High Court has upheld Straw's right to take a decision to release Pinochet based on medical evidence that is not itself subject to any legal scrutiny or challenge.

The Home Office had provided the Court with a sworn affidavit that the Home Secretary would abide by any order the judge might make on the disclosure of the medical report. The affidavit, sworn by Godfrey Nicholas Stadlen, a senior Home Office official, outlined that any decision by Judge Kay on disclosure

would take precedence over the rights of General Pinochet resulting from previous agreements that had been reached by the Minister.

This refers to the fact that it was the Home Office who first made the offer to Pinochet that any medical evidence would be kept confidential.

Secret correspondence between Straw's ministry and Pinochet's lawyers published in the Spanish daily *El Pais* on Sunday revealed that in November last year a civil servant working in the department responsible for extraditions had offered Pinochet complete confidentiality regarding any medical report, if he agreed to an examination.

The same civil servant requested from Pinochet permission for the report to be shown to other British prosecuting authorities, given the "hypothetical outcome" that Straw decided to release Pinochet on medical grounds. This was to remove any danger that a trial be instigated in the UK under the Convention against Torture.

Once Pinochet was assured that these other departments would also abide by the agreement of confidentiality, and that the medical report would "under no circumstances" be made available to the Crown Prosecution Service (CPS), the examination followed.

The exclusion of the CPS was crucial, since it acts as the legal agent for any foreign state seeking an extradition. Had they been given access to the medical evidence, the CPS would have been bound to pass it on to Spanish Judge Baltasar Garzon, whose original extradition warrant sparked Pinochet's arrest in 1998.



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