

London Appeal Court ruling could clear way for Pinochet's return to Chile

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The High Court is expected to rule today on an appeal calling for a judicial review of the Home Secretary's intention to release Chilean General Augusto Pinochet.

There have been many court hearings concerning the case in the nearly 16 months since Pinochet was arrested on an extradition warrant issued by Spanish Judge Baltasar Garzon in October 1998. However, today's hearing could prove decisive, enabling the governments in London and Madrid to finally rid themselves of an unwanted problem.

If the three judges hearing the appeal uphold the decision of the lower court, as is widely expected, the way is open for Home Secretary Jack Straw to halt the extradition proceedings against the former dictator and set him free. A Chilean airforce plane standing by near Pinochet's temporary residence will then whisk him out of the UK.

Straw originally announced January 11 that he was "minded" to lift the extradition warrant, following medical evidence he claimed showed "unambiguously" that Pinochet was unfit to stand trial. Before he took a substantive decision he invited interested parties to make submissions concerning his intentions. However, he refused to release the medical reports on the basis of which he reached his judgement.

Belgium (one of four countries with outstanding extradition cases against Pinochet) and six human rights organisations went to the London High Court at the end of January to seek a judicial review of Straw's actions.

At the hearing, lawyers for Belgium, Amnesty International and the other human rights groups argued that Straw's withholding of the medical evidence was "unfair" and contrary to natural justice. They said the examination had been "cursory" and questioned the choice of doctors who examined Pinochet, pointing out

that none of the four medical practitioners was a specialist in old-age psychiatry and thus competent to reach a diagnosis of senile dementia.

In his ruling refusing to grant a judicial review, Judge Maurice Kay said he was "completely against" any disclosure of the medical report on Pinochet's health and was "entirely satisfied the Home Secretary has acted fairly, lawfully and rationally in the consultation process". The judge added, "Submissions to the contrary are not arguable." He dismissed the human rights organisations' request for access to the report, saying it was "none of their business".

Leave to appeal against Judge Kay's ruling was granted, with the hearing before a three-judge panel set for today.

The fact that Spain, whose judiciary initiated the extradition proceedings against Pinochet in October 1998, is not a party to the latest court moves to prevent Pinochet's release was cited by Judge Kay as a "matter of interest". The judge noted that Spain had adopted this position even though Judge Garzon "has communicated similar views about the present circumstances to those advanced on behalf of Belgium and Amnesty International". The clear implication was that this recent legal challenge to the British Home Secretary was weakened by the absence of Spain in the case.

An Amnesty International (AI) press release February 2 asks, "Where is Spain?" It reports that Pierre Sané, AI secretary general, has written to the Spanish Prime Minister José Maria Aznar expressing dismay at his government's refusal to support the most recent legal challenge against Straw's preliminary decision to halt the Pinochet extradition.

"The organisation considers incorrect the reported reason given by the Spanish Government for its failure

to date to support Judge Garzon's request, namely that the judicial phase of the proceedings has ended and the matter is now solely a political one.”

From the start, Madrid opposed bringing Pinochet to Spain to stand trial on crimes of torture. The conservative government headed by Aznar was very conscious that a Pinochet trial would open up too many uncomfortable questions about the Spanish transition to parliamentary democracy after 30 years of the Franco dictatorship.



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