

British Appeal Court grants judicial review, delaying release of Pinochet

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On Tuesday, three judges granted an application on appeal for a judicial review of the British Home Secretary's intention to release General Augusto Pinochet on health grounds.

The Appeal Court ruling could delay Pinochet's return to Chile for weeks if not months, as a full hearing of the judicial review might itself be subject to further appeals, all the way to the House of Lords. Straw has said he will not take any substantive decision to release Pinochet until the legal processes have been exhausted.

Last week in the High Court, Judge Maurice Kay refused a request for the review submitted by Belgium and six human rights groups. In upholding Belgium's request on appeal, the Court has agreed to a full hearing concerning Home Secretary Jack Straw's decision to withhold the medical evidence on which he based his preliminary decision to release the former Chilean dictator.

Amnesty International hailed the latest ruling, saying, "It is particularly important for us because clearly we want to put our argument before the court, which is that it flouts natural justice not to provide the information in the medical reports."

On January 11 Straw announced that he was "minded" to halt the extradition proceedings against Pinochet following an examination by four doctors who found him unfit to stand trial. Since then, the Home Secretary has maintained that "patient confidentiality" prevents him from revealing the content of the medical report on which he reached this judgement.

Belgium, one of four countries with outstanding extradition warrants against Pinochet, together with six human rights organisations including Amnesty International and Human Rights Watch, is contesting Straw's intention to halt the proceedings and send the general home to Chile.

Nigel Pleming QC, representing Belgium, told the

Appeal Court this week that the Home Secretary was acting in breach of natural justice, had misdirected himself in law and had contravened the conventions governing relations between friendly states by refusing Belgium knowledge of the medical report. Pleming referred to a case one year ago when Britain sought the extradition of a person from South Africa, which had been refused on health grounds. In a letter from Straw to the authorities in Pretoria, the British Home Secretary called for the medical evidence to be sent to London, and stated that medical grounds alone were insufficient to refuse an extradition request.

Pleming went on to say, "We are seeking no more for Belgium than the Secretary of State [Straw] has already afforded to the Solicitor General and the Director of Public Prosecutions in the UK."

Appearing for the Home Secretary, Jonathan Sumption QC said that if the Court considered it in the public interest, the medical reports would be released. But he urged the judges to dismiss a review on the grounds that Spain, whose extradition warrant had originally sparked the whole affair, had not seen fit to challenge the preliminary decision by Straw to free Pinochet on health grounds.

Sumption told the Court that the Home Secretary did not have to disclose the medical report to the states that had requested the extradition, since this would betray the commitment of confidentiality to Pinochet for reasons of "public relations".

The Court was presented with an affidavit, signed by Nicholas Stadlen for the Home Office, calling the Pinochet case "unique in many ways". Stadlen stated that the Home Secretary had "announced that Pinochet is not only mentally unfit to stand trial but that no improvement can be expected."

After having read this five-page document, the Judges decided to grant the judicial review.

Belgian Foreign Minister Louis Michel has said that once the legal process is exhausted in the UK, it is unlikely Belgium would take Britain to the International Court of Justice at The Hague, since “it would be the first time that a European state took another European state to the court... [and] would mean starting litigation with a friendly country.”

Correspondence between the Home Office and Pinochet’s lawyer Maurice Caplan reveals that it was Straw’s department that offered confidentiality to Pinochet to secure his agreement to a medical examination. They also sought to withhold the medical report from the Crown Prosecution Service, to prevent it being passed on to Judge Baltasar Garzon in Spain, whose extradition warrant led to Pinochet’s arrest in London in October 1998.

In a break with the norms governing extradition cases, where contact is normally at the diplomatic level, Judge Garzon has sent copies of his earlier letters supporting a judicial review of Straw’s decision directly to the Crown Prosecution Service in Britain. Garzon points out that his original request for a review, which he made January 19, was not passed on to the British authorities by the Spanish Foreign Ministry.

According to Spanish Foreign Minister Abel Matutes, Straw’s intention to release Pinochet on health grounds meant that the case was no longer a purely juridical matter, but had entered a “political” stage. Since Straw’s announcement on January 11, Madrid has blocked any Spanish involvement in the court proceedings.

Both London and Madrid face major difficulties in trying to extricate themselves from the Pinochet affair and avoid a public trial that might raise uncomfortable questions, while at the same time preserving their claims to uphold human rights. The crimes of Pinochet’s junta are so well known and documented that popular opinion in both countries favours a trial. In a poll for Channel Four Television in Britain, 58 percent of those questioned agreed General Pinochet should face trial in Europe, with 35 percent saying he should be allowed home.



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