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UNITED KINGDOM

Justice, not politics The need for a fair and transparent procedure in the *Pinochet case*

“...justice should not only be done, but should manifestly and undoubtedly be seen to be done.”¹

INTRODUCTION

On 25 January 2000, Amnesty International, the Association of the Relatives of Disappeared Persons, Human Rights Watch, Justicia, the Medical Foundation for the Care of Victims of Torture and the Redress Trust initiated legal action to seek review by the courts of the procedure used by Jack Straw, the United Kingdom Home Secretary, to determine whether Senator Pinochet is fit to stand trial.

The organizations have taken this action because they are deeply concerned about the manner in which the Home Secretary has intervened in the proceedings to determine whether Senator Pinochet should be extradited to Spain to be tried on charges of crimes against humanity.

The organizations consider that the Home Secretary has used an unfair procedure to determine Senator Pinochet's mental condition and to reach his preliminary decision that Senator Pinochet is unfit to be tried and therefore should not be extradited. If the Home Secretary continues with this course of action and allows Senator Pinochet to return to Chile, the significant flaws in the procedure will forever cast serious doubt about whether justice was done.

If Senator Pinochet was found by a court to be unfit to participate in legal proceedings following a full and open hearing at which the evidence was subject to testing, the organizations would support the suspension of further legal action, in accordance with international standards for fair trials.

¹House of Lords in *Pinochet* litigation, *R. v. Bow Street Magistrate, Ex parte Pinochet (No.2)* [1999] 2 WLR 272, quoting Lord Hewart, C.J. in *Rex v. Sussex Justices, Ex parte McCarthy* [1923] 1 K.B. 256, 259.

CONCERNS ABOUT THE PROCEDURE USED BY THE HOME SECRETARY

The Home Secretary has acknowledged that in considering whether Senator Pinochet should be extradited he is acting in a “quasi-judicial” role.² Accordingly, he was obliged to use a procedure which is fair and can be seen to be fair. Amnesty International and the other organizations believe the procedure he used is unfair and as a consequence may provide an unsound basis for him to decide whether Senator Pinochet should be extradited. The concerns about the procedure are, among other things:

prior to the medical examination, the Home Secretary did not notify the states requesting Senator Pinochet’s extradition and those representing the interests of victims and their families of the procedure to be followed, the composition of the panel of experts, the instructions to the panel and the criteria that he was going to use to evaluate the report. Therefore they did not have an opportunity to contest the fairness of the procedure and, as is described below, there are significant concerns that the procedure that was used may have led to inaccurate conclusions;

the Home Secretary did not invite or authorize the interested parties, including the states requesting extradition, to have observers present during the medical examination. If the parties had been permitted to have observers present, they would have been able to suggest lines of inquiry and tests within their area of expertise;

the Home Secretary failed to provide the medical records to the interested parties. Three requesting states - Belgium, France and Spain - are known to have requested to see them and this failure violates the UK’s international obligations *to cooperate with other governments in bringing to justice those responsible for crimes against humanity wherever these crimes occurred and not to take any measures which would be prejudicial to these obligations.*

CONCERNS ABOUT THE MEDICAL PANEL, ITS PROCEDURE AND CONCLUSIONS

Amnesty International and the other organizations have received information that provides grounds for concern about the composition of the medical panel that examined Senator Pinochet, its procedures and its findings. They include:

the panel of experts who examined Senator Pinochet did not include an old-age psychiatrist;

the short period of observation by the panel and the setting may have been insufficient to determine unequivocally that Senator Pinochet is unfit to undergo further judicial proceedings;

the procedure adopted by the panel failed to take reasonable precautions to ensure the accuracy of their observations and to reduce the risk of falsification of symptoms of dementia - it is known to be possible to imitate symptoms of mental illness or Alzheimer’s disease in the short term;

²Statement to the House of Commons, 12 January 2000.

the findings may be consistent with Senator Pinochet suffering from a treatable, temporary condition - it would be inappropriate to refuse to extradite him if there is a possibility of his recovery.

The organizations also note that there have been recent public reports about Senator Pinochet's mental condition which appear inconsistent with the reported conclusions of the medical panel. For example, reported view of Judge Juan Guzman, the judge responsible for investigating Senator Pinochet in Chile, that Senator Pinochet has "perfect mental faculties" (*The Observer*, 23 January 2000).

WHAT AMNESTY INTERNATIONAL AND THE OTHER ORGANIZATIONS WANT THE COURT TO DECIDE

Responding to representations by the organizations, in a letter dated 18th January the Home Secretary informed the organizations that he could not release the medical report because Senator Pinochet would not consent, and a further medical examination was not necessary - the panel that had examined Senator Pinochet was suitably qualified and had used appropriate criteria. The letter indicated that he would take other representations into account and make a decision whether or not to extradite Senator Pinochet.

Amnesty International and the other organizations are seeking a court order that the Home Secretary's decision to proceed to determine whether to extradite Senator Pinochet without agreeing to the organizations' requests to provide the medical report and to require a new examination is wrong.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE HOME SECRETARY

In addition to the matters that are the subject of the legal action, Amnesty International calls upon the Home Secretary to do the following:

The Home Secretary should not make any orders not to extradite Senator Pinochet to Spain pending a full opportunity for the courts to consider the request for judicial review and reach a final decision on that request.

The Home Secretary should permit the requesting states to cross-examine the four experts who conducted the examination on 5 January.

The Home Secretary should limit his decision to a determination whether Senator Pinochet is fit to instruct his counsel in the appeal of the extradition order and, unless Senator Pinochet is unfit to travel to Spain (or any other country), he should leave any decision as to his fitness to stand trial to the Spanish courts. There is adequate provision in Spanish law for ascertaining the mental capacity of an accused person and for the proceedings to be suspended where the accused is suffering from a mental condition which renders them unfit to be tried.

The Home Secretary should set out the basis of his final decision.

The Home Secretary's final decision should be subject to sufficient delay, consistent with domestic and international legal standards on detention, to permit the requesting states and other interested parties to seek judicial review of that decision while Senator Pinochet remains subject to the jurisdiction of United Kingdom courts.

The Home Secretary's decision should be subject to sufficient delay, consistent with domestic and international legal standards on detention, to permit the Director of Public Prosecutions to take action on the requests for a criminal investigation, while Senator Pinochet remains subject to the jurisdiction of United Kingdom courts, based on the submissions the Director of Public Prosecutions has received and the full record of the Spanish criminal investigation.

Background

17 October 1998, Senator Pinochet arrested in the UK.

24 March 1999 - the House of Lords held that Senator Pinochet did not have immunity as the former President of Chile from charges of torture .

8 October 1999, a court ordered the extradition of Senator Augusto Pinochet to Spain to face charges of torture and conspiracy to torture.

14 October 1999, the Republic of Chile made representations to the Home Secretary concerning Senator Pinochet, suggesting his health had seriously deteriorated.

22 October 1999, Senator Pinochet challenged the extradition order and a court is scheduled to hear his application for *habeas corpus* in March 2000.

5 January 2000, a panel of doctors appointed by the Home Secretary examined Senator Pinochet.

11 January 2000, the Home Secretary notified Spain, Belgium, Switzerland and France, the four states requesting extradition, and other interested parties that Senator Pinochet had been examined and that the medical report concluded that Senator Pinochet “is at present unfit to stand trial and that no change to that position can be expected” and that he is “minded” not to extradite Senator Pinochet. He also stated that Senator Pinochet’s solicitors declined to consent to the release of the medical report to the requesting states. He invited representations from the requesting states, the Chilean government, and five non-governmental organizations (NGOs) which had previously participated in the legal proceedings for the extradition of Senator Pinochet: Amnesty International, Human Rights Watch, the Association of the Relatives of Disappeared Persons, the Medical Foundation for the Care of Victims of Torture, and Redress.

14 January 2000, Judge Garzón, the Spanish judge in charge of the investigation of Senator Pinochet, wrote to the UK authorities requesting a second medical examination with possible participation by doctors appointed by a Spanish court;

14 January 2000, Amnesty International and other NGOs requested the Home Secretary to disclose the medical report and allow interested parties to nominate appropriate experts to carry out their own investigations;

18 January 2000, Amnesty International and other NGOs made representations to the Home Secretary, stating that they considered the procedure he had used was unfair and raising serious doubts about the reliability of the medical report and its conclusions;

18 January 2000, the Home Secretary responded, stating among other things that he did not have reason to believe a further examination of Senator Pinochet was necessary to enable the Home Secretary to determine whether or not to extradite him;

· 20 January 2000, Belgian investigating Judge Damien Vandermeersch formally requested the UK authorities to appoint a panel of experts to conduct a new medical examination in the presence of a Belgian expert.

ENDS.../