

Further information on EXTRA 02/00 - Impunity/Legal concern 11 February 2000

SPAIN**Augusto Pinochet, Former President of Chile**

Spanish Judge Baltasar Garzón Real has asked the Spanish government to seek a judicial review of UK Home Secretary Jack Straw's preliminary decision not to extradite former General Augusto Pinochet to Spain. The government has so far refused to pass on his request to the British authorities.

On 11 January 2000 Jack Straw reached a "preliminary conclusion" that Augusto Pinochet should not be extradited to Spain on the basis that he was unfit to be tried, based on medical reports which have been kept secret from the parties seeking extradition.

The Spanish government has announced that it will not challenge Jack Straw's decision, or any future decisions he may come to on the matter, and has refused to pass on to the British authorities Judge Garzón's request that the UK Crown Prosecution Service (CPS) pursue the case until all legal avenues are exhausted. Amnesty International believes that Judge Garzón's request for the Home Secretary's action to be subjected to judicial review in the UK is a legitimate and integral exercise of his responsibilities as a judge and should be respected and supported by the Spanish government.

On 8 February, three judges of the UK Divisional Court granted leave to proceed presenting their case for judicial review of Jack Straw's action to Belgium, which has requested extradition, and to Amnesty International and five other non-governmental organisations. The decision on the judicial review itself is expected on about 16 February. The Divisional Court decision superseded an earlier High Court decision, in which Justice Kay, while denying leave to seek judicial review, said that he found Spain's decision not to challenge the actions of the Home Secretary in court a "matter of interest". He noted that Spain had reached this decision even though Judge Garzón "has communicated similar views about the present circumstances to those advanced on behalf of Belgium and Amnesty International".

The Spanish government has reportedly justified its failure to support Judge Garzón's request on the grounds that the judicial phase of the proceedings has ended and the matter is now a political one. Amnesty International believes this is wrong: the Home Secretary has himself stated in Parliament that his role in extradition matters is a "quasi-judicial" one, and acknowledged that his decisions are subject to review by the courts. The Divisional Court's decision of 8 February has firmly demonstrated that this is still a judicial matter.

The attempt to bring Augusto Pinochet to justice has been of great international importance in the struggle to end impunity for crimes against humanity. Amnesty International believes that the process used in this case must be fair and transparent, and free from political interference. This is essential to protect both the right of the victims to seek justice and the rights of the accused.

BACKGROUND INFORMATION

Augusto Pinochet was arrested in London on 16 October 1998 after Spain issued a judicial request for his arrest on charges of crimes against humanity, relating to cases of torture, "disappearance" and killings under the Chilean military government of 1973-1990. France, Belgium and Switzerland went on to request his extradition.

The House of Lords ruled in March 1999 that Pinochet did not have immunity from prosecution for acts of torture committed when he was head of state, ruling that "torture is an international crime over which international law and the parties to the UN Convention against Torture have given universal jurisdiction to all courts, wherever the torture occurs". The House of Lords held that he could be extradited for crimes of torture, and conspiracy to torture, alleged

to have been committed after 8 December 1988, when the UK ratified the Convention against Torture.

The case for extradition to Spain was heard by Bow Street Magistrates' Court. In October 1999 Magistrate Ronald Bartle ruled that extradition could proceed, leaving the door open for legal action on 1,198 cases of "disappearance" to proceed, stating that the effect on the families of the "disappeared" "can amount to mental torture." Augusto Pinochet's lawyers have lodged an appeal against this decision with the High Court. The appeal is scheduled to be heard in March, but if Jack Straw halts the extradition before then, as he has said he is "minded" to do, this appeal will not proceed.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters as Amnesty members and/or as private citizens, in Spanish or your own language:

- expressing concern at the Spanish Government's decision not to allow a challenge to the UK Home Secretary's decision;
- expressing the view that to continue to block Judge Garzón's request for the Home Secretary's action to be subjected to judicial review in the UK would be to prevent him from legitimately exercising his responsibilities as a judge, responsibilities that the government should respect and support;
- urging the Spanish government to transmit to the British authorities Judge Garzón's request that the CPS pursue the case until all legal avenues are exhausted;
- urging the Spanish government to take all necessary measures to challenge any future decisions by the UK Home Secretary on Augusto Pinochet's extradition that are in breach of international law and international obligations with regard to crimes against humanity;
- urging the Spanish government to support by all reasonable means, including legal action, the claims of the relatives of victims of Chile's military government, and the victims themselves, who have been campaigning for truth and justice for over 25 years.

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and to diplomatic representatives of Spain accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 10 March 2000.