

AI INDEX: EUR 41/01/00
2 February 2000

Pinochet case: Where is Spain?

The Spanish Government should reconsider its decision not to seek a judicial review in the United Kingdom of the British Home Secretary Jack Straw's latest actions in the Pinochet case, Amnesty International said today. The Spanish government has to date refused to back Judge Baltasar Garzón's request to pursue through the courts the UK Home Secretary's preliminary decision not to extradite Augusto Pinochet on health grounds.

In a letter to the Spanish Prime Minister José María Aznar, the Secretary General of Amnesty International, Pierre Sané, expressed dismay at the government's refusal to date to act upon Judge Garzón's request, which is "a legitimate and integral exercise of his responsibilities as a judge, and should be respected and supported by the Spanish Government."

The absence of Spain from the judicial review proceedings has been the subject of speculation and comment. In his ruling on 31 January 2000 in which he denied permission to seek judicial review to Amnesty International, five other human rights organizations and Belgium, Justice Maurice Kay of the UK High Court of Justice considered that Spain's decision not to challenge in court the actions of the Home Secretary was a "matter of interest". In making this observation, the judge noted that Spain had adopted this position even though Judge Garzón "has communicated similar views about the present circumstances to those advanced on behalf of Belgium and Amnesty International."

The organization considers incorrect the reported reason given by the Spanish Government for its failure to date to support Judge Garzón's request, namely that the judicial phase of the proceedings has ended and the matter is now solely a political one. The UK 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.

Amnesty International believes that the process used in this case -- which has a great bearing on the worldwide struggle to bring to justice alleged perpetrators of crimes against humanity -- must be fair and transparent, and above all free from political interference. This is essential to protect both the rights of the victims to seek justice and the rights of the accused.

"The process set up by the UK Home Secretary has taken the matter of Augusto Pinochet's health outside the courts, where the issue of fitness to stand trial is usually determined," Amnesty International wrote. "The Home Secretary has chosen to intervene even though Augusto Pinochet himself did not raise his fitness to be tried as an issue, as he was entitled to do, in current legal proceedings."

"We therefore urge the Spanish Government to support the request of Judge Garzón to use all reasonable means, including legal action, to ensure that justice is done -- and can be clearly seen to be done -- in the proceedings against Augusto Pinochet," Amnesty International concluded.

Amnesty International together with five other human rights organizations, and Belgium, will be in court on Monday 7 February to renew their requests for judicial review of Jack Straw's actions before the UK Divisional Court.

Background

The UK Home Secretary invited Spain to make representations after reaching a preliminary decision that Augusto Pinochet is unfit to be tried and therefore should not be extradited. Judge Garzón responded that it is impossible for him to make effective representations if he is not permitted to see the report of the medical examination of Augusto Pinochet, among other things. While the Spanish government transmitted Judge Garzón's representations to the UK authorities, it has to date refused to act on his request for legal action in the UK courts.

Amnesty International together with five other human rights organizations, and Belgium, have each initiated legal action to challenge as unfair the procedure that the Home Secretary has used to assess Augusto Pinochet's mental condition and fitness to stand trial. Amnesty International considers that the procedure is unfair in particular because it deprives the states seeking extradition the opportunity to assess the report of the medical examination of Augusto Pinochet and to undertake their own medical examination.

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