The state of the chilean government law constitutional administrative essay

Law

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PART A QUESTION 1

CASE NOTE: Regina v Bow Street Metropolitan Stipendiary Magistrate and Others[1999] 1 W. L. R. 272COURT: House of LordsJUDGES: Lord Browne-Wilkinson, Lord Goff of Chieveley, Lord Nolan, Lord Hope of Craighead, and Lord HuttonDATE: 15, 16, 17 December 1998 and 15 January 1999

FACTS:

The applicant, Senator Pinochet was the head of the state of the Chilean government. It was alleged by the Spanish court that during his political times from September 1973 to March 1990, there were various crimes against humanity, including murder, hostages and torture. Additionally, his victims were not only Chilean citizens; but also citizens of other countries like Spain and the United States. He was later arrested in London on the 10th

of October 1998 under two purposes. First he was arrested under warrant by the Metropolitan force and secondly there was international warrant of arrest following to section 8(1) of the Extradition Act 1989, under which the Spanish courts ordered to extradite him to Spain. Ultimately, the Divisional court quashed the first warrant on the ground that he was immune from arrest, as he was a former head of state. The quashing of international warrant stayed pending as the prosecuting authorities appealed to the House of Lords as they contested against the immunity enjoyed by the Senator. Therefore the House of Lords had to establish the scope and extent of immunity and extradition of the applicant. Furthermore, in the main hearing of the appeal, ' Amnesty International' (A. I) (a body known to preserve Human Rights) obtained leave to intervene into the appeal as A. I campaigned against senator Pinochet cruelty in the past. The appeal of Senator Pinochet was allowed by a majority of three to two by the House of Lords and it was held that he was not entitled to immunity. Ultimately, it was discovered that Lord Hoffmann, one of the judges who allowed the appeal was an unpaid director and chairperson of Amnesty International Charitable Limited (AICL), which is a constituent part of the Human Rights body. Consequently, the applicant requested the House of Lords to set aside its previous decision on the grounds of apparent bias on the behalf of Lord Hoffman.

ARGUMENTS:

The applicant argued: The House of Lords should have the prerogative rights to rescind its own decisive orders which they have been improperly made and no other court can rectify the House of Lords improper decisions. Lord Hoffman is actually not bias, but there is a possibility or potential anxiety or

a remarkable doubt that Lord Hoffman might have been biased. Senator Pinochet counsels put forward the cases of Reg. v Gough [1993] A. C 646 and Webb v The Queen (1994) 181 C. L. R 41 as precedents of his arguments.

PROCEDURAL HISTORY

The Queen's Bench Division Court repealed both warrants against Senator Pinochet dated 16th and 23rd October 1998. The first quashing order was accepted whereas the second warrant was maintained to allow the prosecuting authorities to appeal to the House of Lords. On 25th November 1998, the appeal was granted with a majority of three to two where Lord Nicholls, Lord Steyn and Lord Hoffman formed part of the majority while Lord Slynn and Lord Lloyd form disagreed. As a result, on the 23rd October 1998 the second warrant was restored and Senator Pinochet was kept in the United Kingdom to anticipate the Home Secretary's decision in order to continue with the extradition procedures from the United Kingdom under section 7(1) of the Extradition Act 1989. After the decision of the 25th November 1998, Senator Pinochet discovered the linking web between Lord Hoffman, one of the judges who formed part of the majority and Amnesty International, one of the parties bringing the appeal. Also Lord Nicholls and Lord Steyn each delivered speeches holding that Senator Pinochet was not entitled to immunity whereas Lord Hoffmann agreed with their speeches but did not give separate reasons for allowing the appeal. As Lord Hoffmann formed part of the majority for the appeal, his decision undoubtedly resulted in apparent bias. On this ground, Senator Pinochet demanded to set aside the court order through petition. The appeal was then confirmed by the

House of Lords consisting of Lord Browne-Wilkinson, Lord Goff of Chieveley, Lord Nolan, Lord Hope of Craighead and Lord Hutton.

DECISION IN CASE

The petition was allowed on the ground that the House of Lords had power to distinguish from its own previous in order to avoid injustices. It was held by the House of Lords that it was improper for Lord Hoffman to be present in the case and the order of 25th November 1998 might have been bias although presence of actual bias could not be demonstrated against him. A man cannot be the judge in his own cause and must be disqualified if his decision was influenced by any financial consideration or any non-monetary benefits. Decision partly supported by the following precedentsDimes v Proprietors of Grand Junction Canal (1852) 3 H. L. Cas. 759A man shall not be a judge in his own cause. Reg. v Gough [1993] A. C. 646, 661Disqualification of a judge from a case where there is likelihood of bias or favours for the justice to be made, in order to maintain public confidence in the administration of justice; this is further supported by Article 6(1) of the European Convention on Human Rights. Rex v Sussex Justices, Ex parte McCathy [1924] K. B. 256, 259-" justice must not only be done, but seen to be done" (Lord Hewart’s famous dictum)Dimes v Proprietors of Grand Junction Canal (1852) 3 H. L. Cas. 759-A man shall not be a judge in his own cause. The cases below are concerned with the disqualification of a judge due to appearance of bias or procedural impropriety. Webb v The Queen (1994) 181 C. L. R. 41, 74Reg. v. Fraser (1893) 9 T. L. R. 613Law v Chartered Institute of Patent Agents [1919] 2 Ch. 276, 279

DECISION OF COURT

Appeal was allowed. Word Count: 1001 (Part A Question 1)

ELS Coursework 1

Part A

Question 2

(Nemo Judex In Re Sua Causa)2. Natural justice form part of common law, it signifies equality, fairness, equity and reasonableness for everyone. Its principles have been adopted and put into practice by the judiciary in order to protect public rights to be infringed by administrative bodies. Subsequently, in the year of 1963, Lord Reid has enhanced the doctrine of natural justice in Ridge v Baldwin by setting out two set of rules which was easily adopted. They are namely " nemo judex in re sua" which means no man may be a judge in his own cause[1]and " audi alteram partem" the rule for a fair hearing. These two legal terms set the standards that must be taken into consideration in a free decision making process. Hence, the rules of natural justice have been put forward and followed by the judiciary to preserve the public rights against unfairness or unreasonableness of administrative bodies. Also Hegde J stated that " the aim of natural justice is to secure justice, to prevent miscarriage of justice and to give protection to the public against arbitrariness[2]". Thus nemo judex in re sua causa is an essential principle which is concern with the fairness and unprejudiced factor whenever a judge takes a decision. He must do so without being influenced by a pecuniary interest concerning the case before him thus avoiding presence of bias. Where bias means that there were procedural errors in the decision making process. There are two principles in the rule against bias.

The authority exercising judicial power must not have any financial or personal interest in its proceedings and there must not be any suspicion of bias. In R v Secretary of State for the Home Office, Lord steyn said that " Unless there is the clearest provision to the contrary, the parliament must be presumes not to legislate contrary to rule of law". And the rule of law enforces minimum standards of fairness, both substantive and procedural"[3]. Though Lord Steyn principle will definitely have the same meaning if the parliament was replace by the judiciary. Thus public authorities must abide to the rule of law. Therefore it became clear that decisions made under the influence of monetary consideration or any pecuniary interest of a decision maker makes the decision invalid. In a sense it became a principle where ultra vires decision taken by the executive and the courts could be invalidated. Applying the case of R v Bow Street Metropolitan Stipendiary Magistrate and Others Ex parte Pinochet Ugarte (No. 2)The principle of Nemo judex in re sua causa, also complies with article 6 of the European Convention of Human Rights (ECHR). It is relevant in the case of R v Bow Street Metropolitan Stipendiary Magistrate and Others [1999] 2 WLR 272 as it was mention in the case that there was a presence of apparent bias on the judge’s behalf as one of the judge’s was indirectly linked to one party to the case. It was held by the House of Lords that there might have been lack of professionalism on the part of Lord Hoffmann, who was a sitting judge that voted for the majority in allowing the appeal for Amnesty International. It was established by Senator Pinochet that Lord Hoffmann wife and himself was an unpaid director and a chair person of Amnesty International Charitable Limited which is a group who form part to

Amnesty International, where Amnesty International is a party to the actual case. Also Lord Hoffmann was not able to give reasons why he formed part of the majority to grant the appeal in favor of amnesty International. Both organizations were working towards the same achievement, which is to bring justice where ever Human Rights have been breached. Also both organization had the same non-pecuniary interest and resulted in the outcome of the proceedings. It was held that, the House of Lords was not constrained by any statute and the house was in the ability to correct any injustice made from the beginning of the case. Also Lord Hoffmann decision did not have any pecuniary interest. Though it was not proved that Lord Hoffman was directly linked with Amnesty International and there was a good separation between Amnesty International and Amnesty International Charitable Limited, which was not sufficient to overshadow the appearance of apparent bias and not to believe that he was a judge in his own cause. There is still a doubt that Lord Hoffmann could have been impartial and could also had an interest in the outcome of the case, as he was a director of the second arm of Amnesty international, likewise infringing the nemo judex in re sua causa principle. This contributed in establishing reasonable doubt of likelihood of bias. On a concluding note, I would say that it was improper for Lord Hoffmann to form part of the majority in granting the appeal as he knew the case in dispute had some conflict with his personal interest being the chair-person of an arm for the party. Under the reasonable grounds discussed, I would allege presence of bias on behalf of Lord Hoffmann. Thus it obvious that he acted ultra vires in making his decision which was not in conformity with Article 6 of the European Courts of Human Rights (Right to a

fair hearing by an impartial judiciary) and also in contravention with natural justice. In order to be in conformity with the principle of the rule of law and natural justice it is of paramount importance that judges respect and abide themselves to the nemo judex in sua causa principle. Nobody can be the judge in his own cause and the judiciary bodies have to be independent and impartial in order to improve and protect the rights of the public. In addition, judges must be unbiased and apply their discretion without regarding any self-interest that could result in an unfair decision. They must objectively apply their mind to avoid miscarriages of justice and also make sure that justices not just done but seen to be unprejudiced. Word Count: 1001 (Part A Question 2)