

Extradition state immunity torture and hostage act law general essay

[Law](#)



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(1) Part A

(Civil Litigation: Extradition-State Immunity-Torture and Hostage Act - International, Public and Domestic Law)

Facts:

The petitioner, Senator Pinochet was a former Head of State of Chile. During his office period from 11 September 1973 until 11 March 1990 it is adduce that various crimes such as torture falling within section 134(1) of the Criminal Justice Act 1982 and acts of hostage-taking within section 1 of the Taking of Hostages Act 1982. 3 which took place against humanity were caused because of him. The Metropolitan Stipendiary Magistrates issued two provisional warrants for his arrest under section 8 (1) (b) of the Extradition Act 1989 on 16 and 23 October 1993. The latter applies Queen's Bench Divisional Court once he was arrested to quash the warrant on which no further warrant was taken against him. There was a second warrant on 23 of October 1993 which was also quashed but remains stayed in order to have an appeal to the Lordships House in respect of the act. The Crown Prosecution Service claim that due to the position held by Senator Pinochet, he is immune from arrest but since his position is ceased he can be arrested as his immunity is also ceased. Thus, he can be arrest and prosecute for the various allege crimes he was accused. Later, on 25 November 1998 it have been alleged the Lord Hoffman could have been bias to the Judgment of Pinochet due to his link with Amnesty International Charity Limited, (AICL) [1]a company controlled by Amnesty International (AI)[2].

Arguments:

The claimant argued: Senator Pinochet could not be convicted as he is immune from being arrested due to his former position held as Head of State of Chile. The claimant persists to say that even if he was ceased from his position he cannot be arrest in this country for the asserted crimes as he immune remain in respect of the acts

Procedural History:

Trial

After his first arrest under section 8 (1) (b) of the Extradition Act held by the Spanish Supreme Court at the first warrant issued on 16 of October 1998 by the Metropolitan Stipendiary Magistrate. Senator Pinochet applied to the Queen's Bench Divisional Court without delay. The Divisional Court quashed the 16 October 1998 warrant where no warrant purse, it also quashed the second warrant of 23 October 1998 under a unanimous decision. However, his stayed remain to appeal of the Lordships House. On 4-5, and 9-12 November 1998, the case was heard at the Lordships House under the presence of the following Law Lords: Lord Slynn of Hadley, Lord Lloyd of Berwick, Lord Nicholls of Birkenhead, Lord Steyn and Lord Hoffman. At the main hearing of the case AI was represented through the following counsel: Professor Brownlie QC, Michael Fordham, Owen Davies and Frances Webber and also summited a written statement. On 25 November 1998, Lord Hoffman apparent bias was discovered through a letter of AI. On 17 December 1998, there was the oral Judgment of your Lordships House. On 15 January 1999, there were the reasons heard. Earlier decision of the House was set aside.

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Issue Arising:

Whether the position held by Lord Hoffman with AICL an organization which deal with funding of the charitable activities of AI such as AIL makes him a member of AI. Also, if there was apparent bias in the case of Senator Pinochet due to the links of Lord Hoffman, the two company AICL and AI Whether, Lord Hoffman was a judge in his own cause ; nemo iudex in sua causa[3] Whether Lord Hoffman had an " interest" in the case and also if his non-pecuniary interest make his automatic disqualification. If Senator Pinochet is still immune while he was ceased from his position of Head of State of Chile.

Judgment of the Case:

The Law Lords allowed the majority of the appeal upon 3: 2 restoring from the second warrant of 23 October 1998 of the Lordships House. Lord Browne-Wilkinson rejected the submission that the appellant is guilty of apparent bias but agreed that he was disqualified automatically due to a matter of law which reason is that he is the Director of AICL which is a company command by AI. Lord Goff of Chieveley considered that as Lord Hoffman is a member of AICL which in practical terms is an organization which is closely affiliate with AI. Hence, he might have an interest in the proceeding outcome of the present case which might be treated as a party and so be automatically disqualified as a sitting Judge. Lord Nolan agreed with the views of Lord Browne-Wilkinson and Lord Goff of Chieveley. However, he added that when the fairness of a Judge is in matter, it is just crucial as in real life. Lord Hope of Craighead claimed that Lord Hoffman was impartial due to the links of AICL with AI. Despite, the fact that he ought not financial and proprietary

interest in the outcome proceeding. He was actual biased as he was concerned of being his own Judge in the cause due to his relationship with Amnesty International. Lord Hutton also came to the conclusion that Lord Hoffman relationship with AI which Lord Browne-Wilkinson states in his conclusion, might have been possible biased against Senator Pinochet.

Decision partly follows by these precedents:

By applying the test in Reg. v. Gough[4]it was impossible to say that Lord Hoffman was a real danger and that there was apparent bias against Senator Pinochet in favor of AI. In Dimes v. Proprietors of Grand Junction Canal[5]is an example where the Lordships House disqualified Lord Cottenham unanimously as he was biased because of his an interest in the suit. In the cases of Rex v. Sussex Justices, Ex parte McCarthy[6]and Reg . v. Inner West London Coroner, Ex Parte Dallaglio[7]it have been both said that justice should be done and not only appear to be done.

Decision of the Court:

The order of 25 November 1998 should be set aside.

Commentary:

The case concerns alleged crimes against humanity which took place in Chile and for which Senator Pinochet was claimed of being responsible during his office period as Head of State of Chile. Lord Browne-Wilkinson's statement claims that Lord Hoffman was not a member of Amnesty International. He is opened to the question about the membership of Lord Hoffman who is the Director of Amnesty International Charity Limited (AICL). In his Judgment, Lord Browne-Wilkinson apply two implications for the fundamental principle

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of Nemo Judex In Sua Causa which states that a man shall not be a Judge in his trial. The first one was applied in its literal way which states that if a Judge had a financial or proprietary interest in the outcome he shall not be sitting as he will be a Judge in his own cause. While, the second principle is where the Judge have not financial and pecuniary interest in the suit but in some conduct and behaviour had an interest in the outcome such as friendship with the party. Lord Browne-Wilkinson found that the case falls under the first category where the Judge is disqualified to his financial or proprietary but I do not agree with his opinion. I feel that in the present case it is rather the second application as Lord Hoffman had not financial and proprietary interest but mostly an indirect interest through his position with Amnesty International Charity Limited a company directed by Amnesty International. In reference, to this case Lord Goff of Chieveley held in his judgment that the close relationship that Lord Hoffman have with AICL makes him had an interest in the outcome of the present proceeding. I agree with his statement as with the close relationship that the latter had with AI the present purposes can be regarded in practical terms as a treated party in the present proceeding. So, I can be seen as a personal interest. The Judgment, I believe could potentially help to understand whether a former Head of State is immune from alleged crimes which he was accused of being responsible during his office period. And, that Lord Hoffman had a personal and subject matter bias against Senator Pinochet.

(2)

Natural Justice is a principle which expression was described as "sadly lacking in precision" by the English court. Its purpose is to imply fairness,

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equity and equality under the common law right. There are two fundamental rules which encompass Natural Justice Principle; Nemo Judex in Sua Causa or the rule against bias which states that no one man can be a Judge in his case and Audi alteram parte which meant the rule for a fair hearing. The term Nemo Judex in Sua Causa which can also be called Nemo Debet Esse Judex in Propria Cause or even Nemo Judex in Parte Sua is a Latin and fundamental word which derives from Romans and whose origin comes from the principle of Natural Justice. Nemo Debet Esse Judex In Propria Cause have two important aspects the first states that no one ought to be a Judge in his own cause . While the second one is Lord Hewart famous dictum which states that " Justice should not only be done but manifestly and undoubtedly be seen to be done"[8], see Rex v. Sussex Justice, Ex Parte McCarthy[9]which clearly show the doctrine of Nemo Judex in Sua Causa. Moreover, Nemo Judex In Parte Sua shall occur if these two main implications are present; first of all if the Judge who is in fact a party in the outcome had a personal or proprietary interest in the proceeding or secondly if there is a real likelihood of bias or actual bias such as the friendship of a party with a Judge. However, when there is a " real likelihood" it is not easy to distinguish due to the difficulty to understand the state of mind of the person. The rule against bias is strictly applied to any apparent or possible aspect of bias in a case, even if there shall not be any . There should be a breached where the present of Nemo Judex In Sua Causa (no man should be Judge at his own cause). An example of Nemo Judex In Parte Sua, can be seen in the case of R v. Hamond[10]where Judge Blackburn was biased due to financial interest in the outcome proceeding. The principle of natural justice; Nemo Judex In Sua

Causa is obviously relevant to the case of R v Bow Street Metropolitan Stipendiary Magistrate and Others^[11] for the following reasons. First of all, it has been argued that there was an apparent bias throughout the judgment made by the Law Lords. This occurred due to the close relationship that Lord Hoffman had with Amnesty International Charity Limited which is a company controlled by Amnesty International. AI^[12] is a company whose aim is (c) ("to procure the abolition of torture, extra judicial execution and disappearance..."^[13]). Thus, due to the links of Lord Hoffman to AI which is a company whose aim is to abolish torture. It can also be argued as an element which persists on his bias against Senator Pinochet. Also, the latter was the Director of AICL^[14], so along with the objects of Amnesty International Lord Hoffman seems to have been biased against Senator Pinochet. Furthermore, another fact which had caused the possible bias was the issue of Lord Hoffman's wife position held at Amnesty International. In addition, it has been argued that Lord Hoffman had an "interest" in the outcome of the present proceeding case. That is to say, the principle of Nemo Judex in Parte Sua have been applied as Lord Hoffman was a Judge in his own cause through, his links with AICL. Hence, the principle can be seen through the rule against bias of Nemo Judex In Sua Cause. Due to, the result of the Law Lords judgment there were arguments made by them which states that apparent bias shall be present.

Bibliography:

Book

GARY SLAPPER & DAVID KELLY, THE ENGLISH LEGAL SYSTEM, Eleventh Edition, Routledge; London and New York, 2010-2011 Chapter 9 , The Judiciary section 9. 2. 3 Page 389-394

Reading on the Internet

R v Bow Street Metropolitan and Others : <http://www.uniset.ca> / Principles of Natural Justice : <http://www.tnkpsc.com> / Nemo Judex in Causa Sua Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of Legal Studies: <http://www.ijls.ie> / Definition of Nemo Judex In Parte Sua : <http://www.duhaime.org> /

Part B

The English Criminal Process refers to the judicial proceeding of statutes and rules of the criminal law. Throughout, the discussions will portrait the effectiveness of the Judicial Process and on the other hand the abuse of their process. Thus, this analysis will demonstrate, whether it is weighted against the accused or not, as well as evaluating the miscarriages of justice, in regards to the procedure of the Process. To start, the criminal process is undoubtedly weighed against the accused due to particular reasons. Firstly, the change in the rule of double jeopardy law in April 2005, states that the accused are no longer safe as they could be retried for the same offence if new evidence is disclosed after having been acquitted. R v D[15] has been the first case referred to the CA[16] under the new double jeopardy law. The accused has been sentenced to life imprisonment after his retrial.

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Alternatively, we must also consider that not every case could be retried under the change of double jeopardy law. As, for a case to be retried under the rule there must be new concrete evidence like forensic science. Forensic evidence is a piece of material fact such as DNA which can have a fundamental impact on a case. An example is R v Mark Weston[17]case in which the accused was constantly found not guilty in his first trial. The case was retried due to the forensic evidence presence of the victim found on Weston's boots. The accused who was convicted was then found to be guilty of murder. Moreover, we can see that the process is weighted against the accused through the parole system. Hence, it assumes someone to be paroled if the latter signs some documents in which the accused admits the crime for which he has been convicted. Therefore, the sentence will be reduced whereas if the accused refuses to confess the spending in jail will be longer. Thus, we can consider that if the accused is not guilty and that he refuses to sign the documents the latter will spend a longer period in jail. Following the case of Birmingham 6 who were refused to parole for this reason. Resulting from the improvements of the process, we can definitely consider through the above two cases examples; Julie Hogg and Mark Weston that there is small chance that miscarriage of justice occurred. We can see that the change in our modern world can help to render justice through new technology such as DNA. If, wrongful conviction occurred we cannot blame the process at all, as we must remember that the decision and process itself are made by the people. Thus, it can be seen that the Criminal process is ineffective only due to the wrongful application by people and not because of a weakness in the process. Alternatively, the burden of proof is

another feature on the English Criminal Process which derives from the case of Woolmington v DPP[18]. This principle establishes that it is for the prosecution who bring the case to prove it. Thus, in a Criminal case the prosecution who bring the case must prove the case. Now since it is for the prosecution to prove the case the question arises to which standard of proof it must prove it. The Criminal process has established that it must be to that of beyond reasonable doubt. According to Viscount Sankey famous speech, 'Golden Thread'; " the principle...the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained"[19]This element of law is not weighted against the accused as if the prosecution didn't prove the case the accused will not be find guilty. Even if, the accused raised an issue, for instance if the accused claim that crime have been committed due to provocation. The prosecution still have to prove that the crime have not occurred from a result of provocation like in R v Mancini[20]. Another possibility, where the criminal process is not weighted against the accused occurred with the introduction of the Criminal Cases Review Commission under the Runciman Commission. The CCRC[21]can send a case for retrial if there is new evidence which was not available during the first trial. For example in the case of Sophie Walla who was convicted of assault the commission believes that the new evidence will make the court quash the conviction. Nonetheless, there are some examples of cases where miscarriages of justice have occurred. Miscarriage of Justice refers to error of law, it occurs when accused have been wrongfully convicted for a crime which they have not committed. The Bridgewater Four case is an example, in which four men were wrongfully convicted for the

murdering of Carl Bridgewater a 13 year old child but fortunately after the CCRC having reviewed their case the accused were released in 1997. The cases of Birmingham 6, Guilford Four and Maguire Seven where both accused were convicted for several death caused by IRA bombing in pubs. Later, the court review the cases and they were all quashed in 1991. Another case example where miscarriage of justice occurred is R v Robert Graham Hodgson[22]who was convicted of murder. The defendant even said that he was lying and that his confessions were not true. He was released on 18 March 2009 after being innocence by DNA results. Even if, miscarriage of justice does occur at particular times it is true that the process is almost weighted against the accused. Following the case of Brooks v Commissioner of Police for the Metropolis and others[23]in which, it has been recently proved beyond reasonable doubt by the DNA results that these two men, who were accused of the murder of the young black man Stephen Lawrence, were definitely guilty. In my conclusion, I would say that it is right that the English Criminal Process is not weighted against the accused and that there are very small percentages of miscarriages of justice have occurred because of the evolution of law which is being made continuously. Therefore, it is easier for the Criminal Process to render justice to the citizen. Word Count 1030