

# The history of natural justice law constitutional administrative essay

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The requirements of fairness are laid down in " Article 6 of the European Convention on Human Rights[2]", which is now enforceable in the domestic courts under the Human Rights Act 1998[3]. The rule against bias initially arose from the case of *Dimes v Grand Junction Canal*[4] where Lord Cottenham, who happened to be also a Lord Chancellor, possessed shares in a company involved in litigation[5]. The House of Lords set aside Lord Cottenham's verdict on that particular case and held that: " No one can suppose that Lord Cottenham could be influenced by the interest that he had in his concern, but it is of the first importance that the maxim that no man is to be a judge in his own cause should be held sacred[6]." In the case of *R v Bow Street Metropolitan Stipendiary Magistrate and Others*[7], the House of Lords put aside its own judgment following the principle of ' nemo iudex in sua causa', on the basis of Lord Hoffman's apparent bias. For the first time in history, it occurred that the House of Lords set aside its own earlier decision. The relation between one of the judges, Lord Hoffman and Amnesty International were too close to allow the verdict to stand[8]. Lord Hoffman was an ' unpaid director of a subsidiary of Amnesty International[9]'. Despite that Lord Hoffman did not have any personal interest in the matter, the fact that Amnesty International and its subsidiary were parts of a movement that had the same goals gave the House of Lords a good reason to apply the doctrine of ' automatic disqualification'[10]. Lord Browne, the presiding judge, stated that " even if he believed that Lord Hoffman was not guilty of any bias, the principle of absolute impartiality had to be maintained[11]". The principle of ' nemo iudex in sua causa' is important in the case of *Re Pinochet* since it is the basic right of every individual to have the opportunity

to be judged by an impartial decision maker. The rules of natural justice apply whenever the legal rights of an individual are infringed by a decision and such was the case of Pinochet. It is clear that in order for a decision-making process to be fair, there should be an absence of bias[12]. The rule against bias is very rigid; it is not obligatory to prove that actual bias existed; "the merest appearance or likelihood of any possible bias will suffice[13]". In Pinochet's case, the principle of 'nemo iudex in sua causa' had to be applied since there was a possibility that the judgment made by Lord Hoffman was biased because of his relation with Amnesty International. The International Covenant on Civil and Political Rights states under section 14(1) that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law[14]". It is therefore a right that should be respected by all courts in every situation. A judgment which has been flawed by the participation of a judge, who under domestic statutes, should have been automatically disqualified cannot be considered as impartial under section 14. In addition to that, the principle against bias had to be applied in Pinochet's case since the confidence of the general public in the British judicial system would have been destroyed if Lord Hoffman was not disqualified from sitting. Lord Denning stated in *Metropolitan Properties Co (FGC) Ltd v Lannon*[15]: "... the court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then, he should not sit. And if he does sit, his decision cannot stand[16]". It was the reason why in Pinochet's case, the House of Lords held that a decision it had given

had to be set aside and the appeal would be heard again by a new panel of judges and thus gave the appearance of an independent and impartial judicial system to reasonable observers[17]. The exclusion of judges who are likely to be biased, in some way or the other, helps ‘ protect the integrity of the decision-making process[18]’. All the judges involved should act objectively and take decisions on relevant facts and apply the proper law. They should not be biased in any way or be prejudiced on the case in question. In Pinochet’s case, the principle of ‘ nemo judex in sua causa’ was indeed relevant since there were good reasons to believe that the judge could have been unfair in this judgment and therefore it is the duty of the judiciary to establish justice.