CO/4074/98
CO/4083/98

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST
DIVISIONAL COURT

Royal Courts of Justice
The Strand
London

Thursday 28 October 1998

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Bingham of Cornhill)

MR JUSTICE COLLINS

and

MR JUSTICE RICHARDS

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICENDUM

RE: AUGUSTO PINOCHET UGARTE

AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO MOVE FOR JUDICIAL REVIEW BETWEEN:

THE QUEEN

- v -

(1) NICHOLAS EVANS (Metropolitan Stipendiary Magistrate)
(2) RONALD BARTLE (Metropolitan Stipendiary Magistrate)
(3) The Secretary of State for the Home Department

Ex parte AUGUSTO PINOCHET UGARTE

MR CLIVE NICHOLLS QC, MISS CLARE MONTGOMERY QC and MISS HELEN MALCOLM (instructed by Messrs Kingsley Napley, London EC1M 4AJ) appeared on behalf of THE APPELLANT

MR ALUN JONES QC and MR JAMES LEWIS (instructed by Crown Prosecution Service, Headquarters) appeared on behalf of THE GOVERNMENT OF SPAIN

MR JAMES TURNER QC (instructed by The Treasury Solicitor) appeared onbehalf of the Secretary of State

J U D G M E N T

(As Approved by the Court)

Wednesday 28 October 1998

THE LORD CHIEF JUSTICE:

1. There are four applications before the court. The first is an application for leave to move for judicial review issued on 22 October 1998 against Mr Nicholas Evans, a Metropolitan Stipendiary Magistrate and the Home Secretary. In that application challenge is made to the issue of a provisional warrant by the magistrate on 16 October and to the failure of the Home Secretary to cancel that warrant under section 8(4) of the Extradition Act 1989. Secondly, there is an application for habeas corpus issued on 22 October 1998 against the Commissioner of the Metropolitan Police. Thirdly, there is an application for leave to move for judicial review issued on 26 October 1998 against Mr Bartle, another Metropolitan Stipendiary Magistrate, seeking to challenge his decision to issue a second provisional warrant on 22 October 1998. Fourthly, there is a further application for habeas corpus, also issued on 26 October 1998, also against the Commissioner of the Metropolitan Police.

2. It will be apparent that all these applications arise in extradition proceedings. The matters have been fully argued and not treated as mere applications for leave.

3. Extradition is the formal name given to a process whereby one sovereign state, "the requesting state", asks another sovereign state, "the requested state", to return to the requesting state someone present in the requested state, "the subject of the request", in order that the subject of the request may be brought to trial on criminal charges in the requesting state. The process also applies where the subject of the request has escaped from lawful custody in the requesting state and is found in the requested state. But that process has no relevance in these proceedings.

4. Here the requesting state is the Kingdom of Spain, although no perfected request has been received, as will become apparent. The requested state is the United Kingdom. The subject of the request is Senator Augusto Pinochet Ugarte ("the applicant"). He was President of the Government Junta of Chile from 11 September 1973 until, it would appear, 26 June 1974, and was Head of State of the Republic of Chile from 26 June 1974 until 11 March 1990. He is now a Life Senator. He is a national of the Republic of Chile. He is not, and never has been, a Spanish citizen. The Republic of Chile is not a party to these proceedings; it is neither the requesting state nor the requested state; it has no formal standing of any kind.

5. Extradition is a very important international procedure. If there were no such procedure those accused of crime could evade trial and any punishment which might follow on conviction by fleeing from the state where their crimes have been committed to another country from which they could with impunity defy and mock those who would seek to bring them to judgment. But extradition often raises difficult and sensitive issues. The procedure which governs it is accordingly subject to detailed and complex rules laid down by statute and by international agreement.

6. In the present case the relevant statute is the Extradition Act 1989, and the relevant international agreement is embodied in the European Convention, which was brought into force by the European Convention on Extradition Order 1990 (SI 1507 of 1990) as amended, which gives effect to the European Convention on Extradition 1957. That Convention applies as between the parties to it, which include both Spain and the United Kingdom. It applies in the present case. Section 1(1) of the Extradition Act provides:

> "Where extradition procedures under Part III of this Act are available as between the United Kingdom and a foreign state, a person in the United Kingdom who --
>
> (a) is accused in that state of the commission of an extradition crime;
>
> ....
>
> may be arrested and returned to that state in accordance with those procedures."

7. The foreign state in question here, as already indicated, is Spain. "A person in the United Kingdom" is the applicant; "that state" is Spain; and the expression "an extradition crime" is defined in section 2 of the Act.

8. Section 2(1) makes plain that an extradition crime may be either an offence committed within the boundaries of a state or an offence over which a state asserts criminal jurisdiction, although the offence has been committed outside its own boundaries. The terms of the subsection are as follows:

> "(1) In this Act, except in Schedule 1, 'extradition crime' means --
>
> > (a) conduct in the territory of a foreign state .... which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, ... is so punishable under that law;
> >
> > (b) an extra-territorial offence against the law of a foreign state .... which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies --
> >
> > > (i) the condition specified in subsection (2) below; or
> > >
> > > (ii) all the conditions specified in subsection (3) below."

9. Thus an offence may be an extradition crime on the basis of extra-territorial jurisdiction only if the conditions in subsection (2) or (3) are satisfied.

10. Subsection (2) reads:

> "The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom punishable with imprisonment for a term of 12 months, or any greater punishment."

11. The conditions in subsection (3), all of which must be satisfied, are:

> "(a) that the foreign state .... bases its jurisdiction on the nationality of the offender;
>
> (b) that the conduct constituting the offence occurred outside the United Kingdom; and
>
> (c) that, if it occurred in the United Kingdom, it would constitute an offence under the law of the United Kingdom punishable with imprisonment for a term of 12 months or any greater punishment."

12. Section 4(1) enables the authorities in this country to give effect to Orders in Council which have force between contracting parties, and this enables effect to be given to the 1990 Order which I have mentioned.

13. Section 7(1) is important. It provides:

> "Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Part of this Act except in pursuance of an order of the Secretary of State (in this Act referred to as an 'authority to proceed') issued in pursuance of a request (in this Act referred to as an 'extradition request') for the surrender of a person under this Act made --
>
> > (a) by --
> >
> > > (i) an authority in a foreign state .... or
> > >
> > > (ii) some person recognised by the Secretary of State as a .... representative of a foreign

state; ...."

14. Thus, save where provisional warrants are concerned, a person is not to be dealt with under Part III of the Act, which embraces sections 7 to 17, unless two formal acts have taken place: first, there must be an extradition request for the surrender of a person made on behalf of the requesting state; and second, there must be an order of the Secretary of State giving authority to proceed.

15. Section 7(2) specifies what shall be furnished with such request, and subsection (2A) deals with cases for which special provision is made by an Order in Council.

16. Section 7(4) provides:

> "On receipt of any such request the Secretary of State may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.
>
> (5) An authority to proceed shall specify the offence or offences under the law of the United Kingdom which it appears to the Secretary of State would be constituted by equivalent conduct in the United Kingdom."

17. In considering the requirements of a request by the requesting state it is relevant to bear in mind the provisions of Articles 12 and 13 of the 1990 Order. Article 12 provides:

> "1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
>
> 2. The request shall be supported by:
>
> > (a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
> >
> > (b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
> >
> > (c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality."

18. Article 13, headed 'Supplementary Information' reads:

> "If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof."

19. Section 8 of the Act is of fundamental importance to these proceedings. It prescribes two procedures: one for the issue of a warrant, which is conditional upon receipt of an authority to proceed, and the second for the issue of a provisional warrant, which is not conditional upon receipt of an authority to proceed. Section 8(1) provides:

> "For the purposes of this Part of this Act a warrant for the arrest of a person may be issued --
>
> > (a) on receipt of an authority to proceed --
> >
> > > (i) by the chief metropolitan stipendiary magistrate or a designated metropolitan magistrate;

....

(b) without such an authority --

(i) by a metropolitan magistrate;

....

upon information that the said person is or is believed to be in or on his way to the United Kingdom;

and any warrant issued by virtue of paragraph (b) above is in this Act referred to as a 'provisional warrant'."

20. Subsection (3) of section 8 provides:

"A person empowered to issue warrants of arrest under this section may issue such a warrant if he is supplied with such evidence or, in a case falling within subsection (3A) below, information as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime."

21. This subsection applies to both warrants and provisional warrants. I need not refer to subsection (3A), but subsection (4) provides:

"Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Secretary of State, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Secretary of State may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under it, discharge him from custody."

22. Thus, if a provisional warrant is issued the magistrate is obliged to give full notice to the Secretary of State, who has not at that stage given authority to proceed, and the Secretary of State may by order cancel the warrant, and must do so if he decides not to issue an authority to proceed in respect of the subject of the request. If the warrant is cancelled, the subject of the request is entitled to be discharged if he has been arrested.

23. In amplification of that procedure I refer to Article 16 of the 1990 Order, which provides:

"1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2(a), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such an offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It

shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently."

24. Section 9(1) of the Act provides for a person arrested in pursuance of a warrant under section 8 to be brought before a court. Subsection (4) defines the material which the requesting state must supply. Subsections (5), (6) and (7) are directed to ensuring that the subject of the request is not kept in custody unduly long.

25. Then one comes to important provisions in subsections (8) and (9):

"(8) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any representations made in support of the extradition request or on behalf of that person, that the offence to which the authority relates is an extradition crime, and is further satisfied --

(a) where that person is accused of the offence, unless an Order in Council giving effect to general extradition arrangements under which the extradition request was made otherwise provides, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;

....

the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody or on bail --

(i) to await the Secretary of State's decision as to his return; and

(ii) if the Secretary of State decides that he shall be returned, to await his return.

(9) If the court commits a person under subsection (8) above, it shall issue a certificate of the offence against the law of the United Kingdom which would be constituted by his conduct."

26. There are then provisions dealing with bail and discharge.

27. A further series of sections provide for means of challenging decisions. If a committal order is refused and the requesting state seeks to challenge that refusal, machinery for such a challenge is provided by section 10. If a committal order is made, the subject of the order has a right to make application for habeas corpus under section 11. If a committal order is made, the Secretary of State is not obliged to order the return of the alleged offender. He may still decide not to order return for a variety of reasons specified in section 12. If, however, the Secretary of State contemplates making an order for return he is obliged to give notice to the subject of the proposed order, who may seek leave to move for judicial review under section 13(6) of the Act.

28. Thus it is plain that various decisions are entrusted to the Secretary of State: whether to give authority to proceed; whether to cancel a provisional warrant (unless the Secretary of State decides not to give authority to proceed); and whether to make an order for return. Certain decisions are also entrusted to the stipendiary magistrate. He may issue a warrant of arrest if he is supplied with the necessary information or evidence and it appears to him that the conduct alleged would constitute an extradition crime. If a provisional warrant is issued he must notify the Secretary of State and transfer documents as provided in section 8(4). If the magistrate is satisfied in accordance with section 9(8) then he must make an order for committal. The court itself is empowered to determine a question raised by case stated by the requesting state under section 10, to determine an application for habeas corpus under section 11; and to determine

an application for leave to move for judicial review under section 13. It is in my judgment important to recognise this tripartite division of roles. I would wish to discourage applications to the court at an early stage of extradition proceedings, save in unusual cases where such an early application may be appropriate.

29. The calendar of events leading up to these proceedings is short. On Friday, 16 October the first Spanish international warrant of arrest was issued. That is a document which we have not seen and we know nothing of its contents. At 9pm on the same day, Friday, 16 October, application was made to Mr Evans, a Metropolitan Stipendiary Magistrate, at his home. He issued the first provisional warrant. What was before him on that occasion and what he was told we do not know. We do, however, know the terms of the warrant which he issued. Having referred to the applicant, he records that he is accused of the offence that he:

> "Between 11 September 1973 and 31 December 1983, within the jurisdiction of the Fifth Central Magistrates' Court of the National Court of Madrid, did murder Spanish citizens in Chile within the jurisdiction of the Government of Spain."

30. The warrant records that it appeared to the magistrate that the conduct alleged would constitute an extradition crime. That warrant was executed later that same evening. The applicant was at the time lying ill in the London Clinic following surgery. Since that time he has been under arrest.

31. On Monday, 19 October notice was duly given to the Home Secretary under section 8(4) of the Act. On Wednesday, 21 October solicitors acting for the applicant corresponded with the Home Secretary, inviting cancellation of the first provisional warrant and threatening proceedings. On Thursday, 22 October, at about 2.00pm, a second provisional warrant was issued, this time by Mr Bartle. On that occasion a second Spanish international warrant of arrest was before the stipendiary magistrate. It relied on events between 1973 and 1979. What the magistrate was told on that occasion, and what material he was shown, we do not know, but we do know the terms of the warrant that he issued. It disclosed five offences. The first, between 1 January 1988 and December 1992, alleged that the applicant, being a public official, intentionally inflicted severe pain or suffering on another in the performance or purported performance of his official duties. The second, between the same dates, alleged a conspiracy to commit such a crime. The third offence, laid between 1 January 1982 and 31 January 1992 related to the detention of hostages in order to compel such persons to do or abstain from doing any act in pursuance of which he threatened to kill, injure or continue to detain the hostages. The fourth offence, between the same dates, alleged a conspiracy to commit such offences. The fifth offence, said to have been committed between January 1976 and December 1992, alleged that the applicant conspired together with persons unknown to commit murder in a Convention country. These, according to the warrant, appeared to the magistrate to be conduct which would constitute an extradition crime.

32. On the same afternoon, Thursday, 22 October, at about 2.30 applications for judicial review and habeas corpus, which are now before us, were listed in the Divisional Court and an order was made that they be adjourned to Monday, 26 October -- Monday of this week. On the following day, Friday, 23 October, the second provisional warrant was executed. It will be apparent from that brief recitation of the facts that events have moved very quickly.

33. I turn therefore to the first provisional warrant issued on 16 October 1998. Two submissions are made on behalf of the applicant in relation to that warrant. First, it is said that the issue of the warrant is unlawful because the United Kingdom courts have no jurisdiction to exercise authority over the applicant as a former foreign sovereign. That is an argument of which I will defer consideration until I come to the second provisional warrant. Second, it is submitted that the first provisional warrant was bad in law because the offence described relates to the murder of Spanish citizens in Chile, which was not and never had been an extradition crime. The argument here is quite brief. It is submitted that the offence specified is not within section 2(1)(a) of the 1989 Act because the murders were not alleged to have been committed within the territory of Spain. They were indeed expressly stated to have been committed in Chile. Secondly, it is said that the offence did not fall within section 2(1)(b) because condition (2) was not

satisfied. The murder of a British citizen by a non-British citizen outside the United Kingdom would not constitute an offence in respect of which the United Kingdom could claim extra-territorial jurisdiction. That submission is based on section 9 of the Offences Against the Person Act 1861, as amended. From that section it is plain that the United Kingdom courts only have jurisdiction to try a defendant where he has committed a murder outside the United Kingdom if he is a British citizen, regardless of the nationality of the victim.

34. Then it is said that the condition in section 2(1)(b) is not satisfied because the condition in section 2(3)(a) is not satisfied. Spain does not base its claims to jurisdiction on the nationality of the offender, the applicant being a citizen of Chile, but on the nationality of the victims. Therefore it is argued that all the conditions in section 2(3) are not satisfied and it does not save the day that the conditions in subsections (3)(b) and (c) are satisfied. In my judgment that argument is correct. The provisional warrant issued on 16 October was bad. In so holding I make no criticism of the Stipendiary Magistrate who was obliged to act at short notice in a situation of great urgency and with very limited time for reflection. However, whether or not it appeared to him that the applicant's alleged conduct constituted an extradition crime, it is quite plain that it did not and the first provisional warrant was in my judgment plainly bad.

35. I turn to the order of mandamus against the Home Secretary. It is said that he should have cancelled the warrant under section 8(4) on both of these grounds, that is, the absence of an extradition crime and sovereign immunity. It is said that it should have been obvious to him that there was no extradition crime and that the applicant was entitled to immunity as a former sovereign. I would unhesitatingly reject that submission. It is not the duty of the Home Secretary to review the legal validity of a provisional warrant. If legal objections to the validity of such a warrant are raised, the Home Secretary is perfectly entitled to take the view that it is for the court and not for him to resolve what may be vexed questions of law. Any other approach could well lead to an unfortunate blurring of functions. In any event, the Home Secretary had a very short time to consider the matter and, although he knew of the applicant's objection to the first provisional warrant, he had no knowledge of any contrary contentions which the Crown Prosecution Service might wish to advance in answer. Section 8(4) gives the Home Secretary a discretion to cancel a provisional warrant. There is in my judgment nothing whatever on the facts here to suggest that the Home Secretary reached a decision which was perverse or the subject of any misdirection. He was fully entitled to take no action at that stage and await developments.

36. I turn to the second provisional warrant. In relation to it the applicant advances three new arguments, and repeats the sovereign immunity argument of which I have deferred consideration. The first of the new arguments is that the second provisional warrant is bad because the court had no power to issue a second provisional warrant in response to a single request. Such a grant, Mr Nicholls QC has submitted, is contrary to law, practice and principle, and he tells us that never in his formidable experience in this field has he encountered such a thing. For my part I have no doubt that the issue of more than one provisional warrant is unusual and that it would be generally undesirable. One can recognise the possibility of abuse if a requesting state obtains a provisional warrant and lets time pass without making an extradition request or supplying the Article 12 documents, and then applies for a further provisional warrant as the time limits under Article 16 are about to expire. It is, however, to be noted in the present case that there were two Spanish warrants of arrest. The two provisional warrants which were issued did not charge the same offences but different offences. Moreover, I find nothing in the language of the 1989 Act or the 1990 Order which indicates that there may not be two provisional warrants in force at the same time. Given the emergency nature of the provisional warrant procedure and the consequent possibility of error I see no need to read such a restriction into the statutory language. I am not persuaded by the applicant's argument on that point.

37. Secondly it is argued -- and this is also a new argument -- that the stipendiary magistrate wrongly exercised his discretion by denying the applicant an inter partes hearing before issuing the second provisional warrant on 22 October. The applicant's solicitor had written to the Crown Prosecution Service, with a copy to the stipendiary magistrate, seeking an opportunity to make representations. This letter was drawn to the attention of the magistrate. He however in the exercise of his discretion decided not to hold an inter partes hearing. Mr Nicholls criticises that exercise of discretion, although he accepts that it would

only be in an exceptional case such as this that there would be a need to hold such a hearing. I would reject that argument also.

38. It is important to bear in mind the observations of Lord Widgery CJ in R v West London Metropolitan Stipendiary Magistrate, ex parte Klahn [1979] 1 WLR 933, 936B where he said:

> "In the overwhelming majority of cases the magistrate will not need to consider material beyond that provided by the informant. In my judgment, however, he must be able to inform himself of all relevant facts. Mr Woolf, who appeared as amicus curiae, and to whom the court is indebted for his assistance, submitted that the magistrate has a residual discretion to hear a proposed defendant if he felt it necessary for the purpose of reaching a decision.We would accept this contention.
>
> The magistrate must be able to satisfy himself that it is a proper case in which to issue a summons. There can be no question, however, of conducting a preliminary hearing. Until a summons has been issued there is no allegation to meet; no charge has been made. A proposed defendant has no locus standi and no right at this stage to be heard. Whilst it is conceivable that a magistrate might seek information from him in exceptional circumstances it must be entirely within the discretion of the magistrate whether to do so."

39. That was not an extradition case but the Chief Justice's approach in my judgment applies. This was very much a question for the stipendiary magistrate and I find nothing in the facts here to suggest a challengeable exercise of discretion.

40. The third new argument relates to the substance of the second provisional warrant. Mr Nicholls accepts that the first four counts of the second provisional warrant disclose extradition crimes within the meaning of the Act, subject to an argument which he advances on retrospectivity. But he submits that count 5 does not disclose an extradition crime. The United Kingdom legislation relevant to counts 1 and 2 in that warrant is section 134 of the Criminal Justice Act 1988. The legislation relevant to counts 3 and 4 is section 1 of the Taking of Hostages Act 1982. An offence under those provisions is committed if the act prescribed is done in the United Kingdom or elsewhere. Thus the United Kingdom is entitled to claim extra territorial jurisdiction over these offences committed abroad.

41. The fifth count of conspiracy to murder is based on section 4 of the Suppression of Terrorism Act 1978, which makes it an offence to commit certain offences in Convention countries if it would be an offence to commit such an offence in the United Kingdom.

42. The basis of Mr Nicholls' retrospectivity objection is this. He says that at some of the dates covered in the second provisional warrant and in the second international warrant of arrest some of the offences were not crimes in English law. So far as count 5 is concerned, he submits that during some part of the period covered in the count Spain was not a Convention country, and Chile was at no time a Convention country. More fundamentally he submits that conspiracy to murder has not been brought within the ambit of section 4 of the Suppression of Terrorism Act. So far as that point in relation to count 5 is concerned, it is in my judgment a sound objection, but it is of little assistance to Mr Nicholls if the other counts are sustainable or potentially so.

43. So far as the objections to counts 1 to 4 are concerned, I regard the applicant's objections as premature. If Spain makes a request for extradition it will have under Article 12(2)(b) of the 1990 Order to give a statement of the offences for which extradition is requested, with a time and place of their commission set out as accurately as possible. If the information supplied is insufficient, better information must be requested under Article 13. It will then be possible to see whether there is any valid objection on the retrospectivity ground. This is a matter to be explored and examined before the stipendiary magistrate. It is not in my judgment a matter to be canvassed in this court at this stage.

44. I would however add on the retrospectivity point that the conduct alleged against the subject of the request need not in my judgment have been criminal here at the time the alleged crime was committed abroad. There is nothing in section 2 which so provides. What is necessary is that at the time of the

extradition request the offence should be a criminal offence here and that it should then be punishable with 12 months' imprisonment or more. Otherwise section 2(1)(a) would have referred to conduct which would at the relevant time "have constituted" an offence, and section 2(2) would have said "would have constituted". I therefore reject this argument.

45. I come then to the argument on the sovereign immunity issue which is common to both warrants. The factual premise of this argument is that from the earliest date specified in the second provisional warrant, January 1976, the applicant was Head of State of the Republic of Chile. He ceased to be so before January 1992, which is the latest date in the provisional warrant, but there is nothing in any document we have seen which alleges any specific conduct against the applicant after he had ceased to be Head of State in March 1990. It is also noticeable that the second international warrant of arrest issued in Spain on 18 October covers the period September 1973 to 1979. Mr Jones QC for the Crown Prosecution Service acknowledged that it had not been his client's intention to rely on anything said to have been done after the applicant ceased to be Head of State in March 1990. We have before us sworn evidence that the applicant was Head of State of the Republic of Chile between September 1973 and March 1990. That evidence has not been contradicted and we see no reason to doubt it.

46. The applicant's proposition, put simply, is that a court in the United Kingdom will not exert criminal or civil jurisdiction over a former Head of State of a foreign country in relation to any act done in the exercise of sovereign power. That submission is based, first, on section 1 of the State Immunity Act 1978, which provides:

> "1. A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.
>
> 2. A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question."

47. I draw attention also to section 14(1) which provides:

> "The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to --
>
> (a) the sovereign or other head of that State in his public capacity;
>
> ...."

48. Section 20(1) provides:

> "Subject to the provisions of this section and to any necessary modifications, the Diplomatic Privileges Act 1964 shall apply to --
>
> (a) a sovereign or other head of State;
>
> ....
>
> as it applies to the head of a diplomatic mission, to members of his family forming part of his household and to his private servants."

49. Section 23(3) provides:

> "Subject to subsection (4) below, Parts I and II of this Act do not apply to proceedings in respect of matters that occurred before the date of the coming into force of this Act ...."

50. It is in my judgment plain by implication that Part III, which includes section 20, does apply to proceedings in respect of matters that occurred before the coming into force of the Act.

51. The Diplomatic Privileges Act 1964 to which reference is made incorporates and gives effect in English law to the Vienna Convention. Section 1 provides:

> "The following provisions of this Act shall, with respect to the matters dealt with therein, have effect in substitution for any previous enactment or rule of law."

52. Section 2 deals with the incorporation of the Vienna Convention, and some of its Articles are set out in a Schedule to the Act. Article 29 provides:

> "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

53. Article 31 provides:

> "1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
>
> ...."

54. There follow exceptions irrelevant for present purposes.

55. Article 39 provides:

> "1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceedings to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.
>
> 2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist."

56. The applicant submits that, read with section 20(1) of the 1978 Act, Article 39 confers the same immunity on a head of state or a former head of state as on a head or former head of a diplomatic mission. He submits that after a head of state ceases to be such, he ceases to enjoy any immunity in respect of personal or private acts but continues to enjoy immunity in respect of public acts performed by him as head of state, that is in respect of the exercise by him of sovereign power in that capacity.

57. The applicant submits that the conduct alleged against him in the second international warrant of arrest relates not to his private or personal conduct but to his conduct when exercising sovereign power as head of state of the Republic of Chile. In that document under the heading "Charges" one finds the following:

> "It can be inferred from the enquiries made that, since September 1973 in Chile and since 1976 in the Republic of Argentina, a series of events and punishable actions were committed under the fiercest ideological repression against the citizens and residents in these countries. The plans and instructions established beforehand from the government enabled these actions to be carried out. The purpose of these actions was the elimination, disappearance or kidnapping of thousands of persons who were also systematically subject to torture, as it has been described in the 'Rettig Report'.
>
> It has been ascertained that there were coordination actions at international level that were called 'Operativo Condor', in which different countries, Chile and Argentina among them, were involved,

and whose purpose was to coordinate the repressive actions among them.

In this sense, Augusto Pinochet Ugarte, Commander-in-Chief of the Armed Forces and head of the Chilean Government at the time, committed punishable acts in coordination with the military authorities in Argentina between 1976 and 1983 (the investigations related to the Criminal Proceedings cover this period), as he gave orders to eliminate, torture and kidnap persons and to cause others to disappear, both Chileans and individuals from different nationalities, in Chile and in other countries, through the actions of the Secret Service (DINA), and within the framework of the above mentioned 'Plan Condor'.

....

Within this context, Augusto Pinochet Ugarte, born 25.11.15 in Valparaiso/Chile, Chilean ID number 1.128.923, appears to be one of the main responsibles within the organization, and, in coordination with high military officials and civilians from other countries, namely Argentina, he was in charge of creating an international organization that conceived, developed and carried out a systematic plan of illegal detentions (abductions), tortures, forcible transfers of persons, murders and/or disappearances of many people, including citizens from Argentina, Spain, the United Kingdom, the US, Chile and other countries. These actions were carried out in different countries in order to achieve the political and financial aims of the conspiracy, mainly to exterminate the political opposition and many people for ideological reasons since 1973. These events coincide with similar events happened in Argentina between 1976 and 1983. It must also be pointed out that, apart from the cases included in this Order, there are others which, although they happened previously, would be integrated in the same dynamics, and their repercussions still remain because they were people whose whereabouts remain unknown."

58. The thrust therefore of that warrant makes it plain that the applicant is charged not with personally torturing or murdering victims or causing their disappearance, but with using the power of the state of which he was head to that end. It is important to emphasise that so far as this court is concerned, it expresses no view on the truth or falsity of those accusations and it has no role whatever in passing judgment upon them.

59. The applicant contends that the law as enacted in 1964 and 1978 reflects international customary law. In support of that submission we have been referred to Satow's Guide to Diplomatic Practice (fifth edition) which says in paragraph 2.1:

"From this immunity of the head of state there flowed, at least in part, the privileges and immunities accorded to diplomats and consuls who represented the state....

2.2 The personal status of a head of a foreign state therefore continues to be regulated by long-established rules of customary international law which can be stated in simple terms. He is entitled to immunity -- probably without exception -- from criminal and civil jurisdiction....

....

2.4 A head of state who has been deposed or replaced or has abdicated or resigned is of course no longer to entitled to privileges or immunities as a head of state. He will be entitled to continuing immunity in regard to acts which he performed while head of state, provided that the acts were performed in his official capacity; in this his position is no different from that of any agent of the state. He cannot claim to be entitled to privileges as of right, although he may continue to enjoy certain privileges in other states on a basis of courtesy."

60. In Lewis on State and Diplomatic Immunity (third edition) at page 125, one finds in paragraph 13.2:

"The sovereign's personal immunity at common law, whereby he may not be directly impleaded, is total, though he may waive it by an actual submission (a prior agreement will not bind him; he must

institute proceedings or take a step in them as to the merits). It is an extension of this immunity that immunity may be accorded to entities of sovereign status, whether the State (which may itself be a party to proceedings), the Government, or a department of or under the supervision or control of the State."

61. In Halsbury's Laws (fourth edition) volume 18, at paragraph 1547 one finds:

"Official acts done by a foreign sovereign or state or foreign government recognised as such by Her Majesty cannot be made the basis of responsibility of that sovereign, state or government if those acts are done in the country concerned, whether the act is right or wrong and whether it is according to the country's constitution or not."

62. In Professor Brownlie's Principles of Public International Law (third edition), at page 507, he writes:

"One form of the Act of State doctrine is the rule that municipal courts will not pass on the validity of the acts of foreign governments performed in their capacities as sovereigns within their own territories. In this form the rule has been applied to foreign expropriation measures by courts in various states and by the United States Supreme Court in the Sabbatino case, 376 US 398 (1964). The rule has obvious significance in the field of jurisdiction, and a variety of considerations of policy are thought to support it, including the need to leave the executive unencumbered in its conduct of international relations."

63. Mr Jones, in a sustained argument on behalf of the Crown Prosecution Service, takes strong issue with this interpretation of the 1964 and 1978 Acts. He submits that, if section 20(1) of the 1978 Act and Article 39 of the Vienna Convention are read together, immunity only applies to a former head of state in relation to sovereign acts performed in this country. That is an argument which I cannot accept. No such geographical limitation is to be found in the provisions; no such geographical limitation applies to heads of mission; and it is not perhaps very probable that a foreign sovereign would exercise sovereign power in this country. The submission is in any event inconsistent with the underlying rationale of the rule, which is a rule of international comity restraining one sovereign state from sitting in judgment on the sovereign behaviour of another. He then argues that the protection accorded to a foreign sovereign avails him only in relation to the discharge of his functions as head of state, and such functions, Mr Jones contends, cannot include conduct such as that charged against the applicant. That is an argument which has some attraction. But a former head of state is clearly entitled to immunity in relation to criminal acts performed in the course of exercising public functions. One cannot therefore hold that any deviation from good democratic practice is outside the pale of immunity. If the former sovereign is immune from process in respect of some crimes, where does one draw the line? Mr Jones answers that some crimes are so deeply repugnant to any notion of morality as to constitute crimes against humanity and that there can be no immunity in respect of them. Thus, he submits that a former head of state (or presumably a head of state) can be held criminally responsible for such acts like anyone else. In that category he would place such crimes as genocide, torture, the taking of hostages and other crimes of a similarly offensive character.

64. In support of his argument that crimes such as genocide have a peculiar quality of horror, Mr Jones is able to point to Article 4 of the Convention on the Prevention and Suppression of the Crime of Genocide, approved by the General Assembly of the United Nations in December 1948. That provides in Article 4:

"Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether are constitutionally responsible rulers, public officials, or private individuals."

65. The difficulty for Mr Jones' argument is, however, that when partial effect was given to that Convention in the United Kingdom by the Genocide Act 1969, Article 4 was not incorporated in the statute. In any event genocide is not one of the offences specified in the second provisional warrant. The United Kingdom statutes which are implicitly relied on in counts 1 to 4 of that second provisional warrant, as already mentioned, are the Taking of Hostages Act 1982 and section 134 of the Criminal Justice Act 1988 in relation to torture. They contain no provision in any way analogous to Article 4 of the Genocide Convention.

66. It is of course a matter for acute public concern that those who abuse sovereign power to commit crimes against humanity should not escape trial and appropriate punishment. We have been referred to the Charter which established the International Military Tribunal at Nuremberg in 1945. It provided in Article 7:

> "The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment."

67. Similarly, the Statute of the International Tribunal for the Former Yugoslavia in 1993 provided in Article 7:

> "2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

68. The Statute of the International Tribunal for Rwanda in 1994 contained an identical provision. Two points, however, fall to be made on these Instruments. First, these were international tribunals, established by international agreement. They did not therefore violate the principle that one sovereign state will not implead another in relation to its sovereign acts. Secondly, it was evidently thought necessary to provide that there should be no objection to the exercise of jurisdiction by the tribunal over foreign sovereigns. In my judgment reference to these Conventions does not advance Mr Jones' argument; if anything, it undermines it.

69. He relied on a number of United States decisions in support of his contention, but in my judgment these gave him limited assistance. In Jimenez v Aristeguieta 311 F.2d 547 (1962), it was found that the defendant was not a sovereign and was not being impleaded in relation to sovereign acts. In Trajano v Marcos 978 F2d 493 (9th Cir. 1992), the daughter of the former President Marcos was held not to be entitled to immunity because she had acted on her own authority and not the sovereign authority of the Republic of the Philippines. In United States of America v Noriega 746 F.Supp. 1506 (SD Fla 1990), it was held that General Noriega was not recognised as a head of state and that his drug-related activities did not involve the exercise of public or sovereign authority.

70. Much greater assistance is given to Mr Jones by Hilao v Marcos, (1994) United States Court of Appeals, Ninth Circuit, 119. It was there held that the act of torture, execution and the causing of disappearance alleged against President Marcos were clearly outside the authority which he held as President. It is noteworthy that the Philippine Government agreed that the suit should proceed. The decision however turned on the construction of the United States' Foreign Sovereign Immunities Act, which is in terms very different from our own legislation.

71. Finally, we were referred to Filartiga v Pena-Irala (1980) United States Court of Appeals, Second Circuit, 169, but that did not involve a defendant who was, or claimed to be, a head of state or former head of state.

72. More germane to the present problem in my judgment is the decision of the English Court of Appeal (Civil Division) in Al-Adsani v Government of Kuwait (12.3.96, reported in The Times, 29 March). The plaintiff in those proceedings claimed to have suffered torture in Kuwait at the hands of the Kuwaiti Government. He brought a civil action in England, claiming damages from the Government. The Government claimed immunity under section 1 of the State Immunity Act 1978. The plaintiff argued that immunity was only available if the Government had been acting in accordance with the Law of Nations. That argument was rejected. In rejecting it Stuart-Smith LJ said:

> "At common law a sovereign state could not be sued at all against its will in the courts of this country. The 1978 Act, by the exceptions therein set out, makes substantial inroads into this principle. It is inconceivable, it seems to me, that the draftsman, who must have been well aware of the various international agreements about torture, intended section 1 to be subject to an overriding

qualification."

73. The analogy with the present case is not exact since that case raised no question about the exercise of official functions. Nonetheless, if the Government there could claim sovereign immunity in relation to alleged acts of torture, it would not seem surprising if the same immunity could be claimed by a defendant who had at the relevant time been the ruler of that country.

74. I would for my part accordingly hold that the applicant is entitled to immunity as a former sovereign from the criminal and civil process of the English courts. This is a conclusive objection to the second provisional warrant. It is also a conclusive objection to the first provisional warrant, were a further objection needed. Since this is an objection going to the jurisdiction of the court (see R v Madan [1961] 2 QB 1,7) it is in my view entirely proper to have brought it before this court at this stage.

75. While I would not wish to be understood as saying that the applications for habeas corpus are in any way inappropriate, I regard relief by way of certiorari to quash both warrants as the most appropriate relief, since the applicant is detained on the authority of these warrants, which must be quashed. Subject to the agreement of my Lords, I would accordingly order that leave to move for judicial review be granted to the applicant in relation to both applications against the respective Metropolitan Stipendiary Magistrates. I would dispense with further formalities. I would order that both provisional warrants be quashed. In relation to the application against the Home Secretary I would refuse leave to move.

76. Insofar as the order relates to the second provisional warrant, I would however enter two important riders. First, we shall listen to any argument that may be addressed to us on the grant of leave to appeal and on the terms which should be attached to such grant. Second, if such leave is sought and granted, I would stay the effect of the court's order quashing the second provisional warrant until such appeal has been determined or until future order on suitable undertakings from the Crown Prosecution Service to pursue any application for leave or any appeal with diligence and expedition. It is, in short, my intention that the applicant should remain under arrest until the final determination of any appeal against this decision. I am willing, of course, to hear counsel on the mechanics of giving effect to the order.

77. MR JUSTICE COLLINS: I agree with my Lord's conclusions and the reasons he has given for reaching them. I would only add a very few words, having regard to the importance of the matter with which we are dealing.

78. The case against the applicant depends upon him being responsible, so it is said, for the system which resulted in the crimes alleged. The whole case thus depends, as I see it, upon establishing that the applicant was acting at the relevant time as head of government and was thus directing the evil regime that is attacked. The charges cover the period when the evidence before us is that he was indeed head of state. The only material before us consists of a certificate from the present Ambassador for the Republic of Chile and two affidavits from individuals, both of whom served as ambassadors for the Republic of Chile and foreign ministers. Against that there has been reference to vague suggestions in the skeleton argument produced by Mr Turner that some works of public reference suggest that he might, although having the executive power, not have been the head of state. Those seem to me to be wholly insubstantial and in no way support any suggestion that he was not at the material time head of state.

79. These proceedings are concerned, and concerned only, with immunity given to a head of state. This is an immunity which attaches to him by virtue of his office, absolute while he is head of state and limited thereafter to acts done in the exercise of his functions as head of state. In reality the situation which faces us is unlikely to arise, except in cases where the head of state has also the control of executive powers.

80. The submission was made, as my Lord has indicated, that it could never be in the exercise of such functions to commit crimes as serious as those allegedly committed by the applicant. Unfortunately, history shows that it has indeed on occasions been state policy to exterminate or to oppress particular groups. One does not have to took very far back in history to see examples of that sort of thing having happened. There is in my judgment no justification for reading any limitation based on the nature of the crimes committed into the immunity which exists.

81. There is, in a case such as this, a great temptation to say, having regard to the seriousness of the matters: if he is responsible he deserves to pay for the terrible crimes that have been committed; if the Spanish courts have jurisdiction, why not send him there to be tried? But one cannot twist the law to meet the apparent merits of any individual case. Accordingly, and for the reasons given by my Lord, I agree with the conclusion that he has reached.

82. MR JUSTICE RICHARDS: I agree with both judgments.

83. MR NICHOLLS: My Lord, I do not know whether my friend will be making an application for leave to appeal, but if that is to be the case I would ask for the opportunity to consider with him conditions in relation to bail, so that they may be put before the court.

84. THE LORD CHIEF JUSTICE: Mr Jones?

85. MR JONES: My Lord, the only exercise we have is where we propose to seek leave to appeal under section 5(1) of the Administration of Justice Act 1960, it is necessary immediately after the decision to state that we do intend to appeal in order that the court can give the order.

86. THE LORD CHIEF JUSTICE: Well, we can defer making our order for half an hour.

87. MR JONES: My Lord, the other thing is that if your Lordships granted the relief additionally under habeas corpus, as well as under judicial review, that would mean that it was not necessary to formulate a question because by virtue of section 15 of the 1960 Act --

88. THE LORD CHIEF JUSTICE: I think the formulation of a question may not be very hard. We have given some thought and it seems to us that this is an appropriate question:

> "It is certified that a point of law of general public importance is involved in the court's decision, namely the proper interpretation and scope of the immunity enjoyed by a former head of state from arrest and extradition proceedings in the United Kingdom in respect of acts committed while he was head of state."

89. MR JONES: My Lord, if that is a question which meets with my learned friend's approval, we would immediately invite the court, in view of the international importance, to grant leave, to truncate the proceedings and I have instructions on behalf of the Spanish authority and the Crown Prosecution Service to indicate that we wish to appeal and we would invite the court to proceed accordingly.

90. THE LORD CHIEF JUSTICE: I think, Mr Jones, that if we rise for 10 minutes you and Mr Nicholls can have a constructive discussion, I trust.

91. MR NICHOLLS: My Lord, may I say that we certainly agree with the formulation as put by Mr Jones, but we do not agree that he should have leave.

92. THE LORD CHIEF JUSTICE: We will give you an opportunity, Mr Nicholls, of resisting that. I think it is helpful if we rise for ten minutes and you can discuss the mechanics from here.

93. MR TURNER: My Lord, on behalf of the Secretary of State I have an application. I do not know whether your Lordship would hear that now?

94. THE LORD CHIEF JUSTICE: Mr Nicholls, you cannot resist paying the Secretary of State's costs, can you?

95. MR NICHOLLS: No, my Lord.

96. THE LORD CHIEF JUSTICE: Very well. We shall dismiss the application for leave to move against the Secretary of State, with costs.

97. MR TURNER: I am grateful.

(The court adjourned for a short time)

98. MR JONES: We have agreed the mechanics of the matter. What is not agreed is whether leave should be granted by this court.

99. THE LORD CHIEF JUSTICE: We will hear argument on that.

100. MR JONES: My Lord, under section 5(1) of the Administration of Justice Act 1960: "The court may make an order providing for the detention of the defendant before directing that he shall not be released except on bail so long as any appeal under section 1 of this Act is pending." My Lord, what is proposed is that your Lordship should direct that the applicant shall not be released, except on bail so long as any appeal is pending. That matter has been determined by the chief magistrate. My Lord, what is proposed, because of the problem of detaining the applicant at hospital is causing difficulties, what is proposed is that we appear before the chief Metropolitan Magistrate later this afternoon, for him to give directions as to where and what conditions he considers for the bail application, which will be this week. If your Lordships were to make that order: not be to released except on bail if granted by the magistrate or any other competent authority hereafter. My Lord, that disposes of the technical matters, we submit, under section 5(1).

101. THE LORD CHIEF JUSTICE: That is, I think conditional on the question of leave.

102. MR JONES: My Lord, no. I think if we apply for, or the prosecutor is granted, or gives notice that he intends to apply for leave to appeal, even if your Lordship says, "We are not going to give leave," once we have said that we intend to apply for leave --

103. THE LORD CHIEF JUSTICE: Mr Nicholls, my Lords and I are minded to make the order under section 5(1) of the 1960 Act. Do you oppose that?

104. MR NICHOLLS: My Lord, if your Lordships grant leave --

105. THE LORD CHIEF JUSTICE: Mr Jones has pointed out to me that even if we do not give leave, the section covers it so long as he gives notice that he intends to apply for leave to appeal.

106. MR NICHOLLS: That was the position in the McCaffry(?) case.

107. THE LORD CHIEF JUSTICE: It seems to me that, irrespective of leave, it is appropriate to make an order under section 5(1).

108. MR NICHOLLS: My Lord, it is subject, of course, whether the intention to apply for leave includes a petition.

109. THE LORD CHIEF JUSTICE: I think we all understand Mr Jones to be giving us notice that he intends to apply for leave if we do not grant it.

110. MR NICHOLLS: My Lord, I see the point.

111. THE LORD CHIEF JUSTICE: Very well. We shall make that order under section 5(1), Mr Jones.

112. MR JONES: My Lord, we would invite the court to certify the question in the terms proposed. My Lord, given the evidence, the importance, and international interest we say that it is inevitable, practically speaking, that the House of Lords would grant leave. We submit that it is much more efficient and in the interests of all parties for the matter to be determined as soon as possible. My Lord, we would certainly undertake to give our petition to the House of Lords certainly within the normal 14 days.

113. THE LORD CHIEF JUSTICE: I think we would be looking for something much quicker than that.

114. MR JONES: My Lord, I was hoping by Monday -- close of play..

115. THE LORD CHIEF JUSTICE: Close of play on Monday sounds sensible.

116. MR JONES: My Lord, if I can just deal with one or two other practical matters, in our submission nothing that has been said by your Lordships in any way impedes or inhibits the right of the Spanish authority to represent their request to this country. They can still do so and we are anxious obviously that no time limits are broken or set at nought by virtue of the extra procedure. My Lord, it is our intention to invite the Spanish authorities that they should comply with the time limits as extended (if appropriate) for putting in their application and if there was a request for extradition by the Spanish Government within the time, then that would fall to be considered by the Secretary of State, no doubt only after a successful appeal to the House of Lords.

117. THE LORD CHIEF JUSTICE: I think that is helpful, Mr Jones. You have made your position quite plain. I think we should probably say nothing at all about that because the question could arise as to what the legal implications were.

118. MR JONES: My Lord, for my part I cannot think that there was any particular relief or interlocutory assistance we might need in that regard.

119. THE LORD CHIEF JUSTICE: I do not think so.

120. MR JONES: I wanted to make it clear in public that that was our view.

121. THE LORD CHIEF JUSTICE: Thank you. My Lord is anxious that we should make it plain that we are not granting any extension of time.

122. MR JONES: Oh, no, absolutely, my Lord. I was not intending to indicate that.

123. MR NICHOLLS: My Lord, I want to oppose leave. In my submission, there is no reason in this case to depart from the usual practice, save in exceptional cases, leave to be left to the House of Lords. My Lord, the reason I say that is that in your Lordship's judgment you found no support for the contention advanced by the respondent on the argument relating to immunity. In my submission in those sort of circumstances leave ought to be refused.

124. My Lord, I have one other application -- it follows the event, namely an application for costs either against the Commissioner of Police or alternatively out of public funds.

125. THE LORD CHIEF JUSTICE: Out of central funds?

126. MR NICHOLLS: Yes.

127. MR JONES: My Lord, if it is out of central funds, under section 16(5) we have no locus to argue one way or the other.

128. THE LORD CHIEF JUSTICE: It follows, does it, from the fact that these are categorised as criminal proceedings for the purpose of the Supreme Court Act that they are criminal proceedings for that purpose also?

129. MR JONES: Yes, these are undoubtedly in a criminal cause or matter.

130. THE LORD CHIEF JUSTICE: Yes. We make the order requested under section 5(1) of the Administration of Justice Act 1960, which is consistent with the order we have already indicated, namely that the order of certiorari quashing the second provisional warrant will not take effect until the determination of any appeal. We grant leave to the Crown Prosecution Service to appeal against our decision to the House of Lords. We do that having regard to the obvious public importance and international interest in the issue that has been raised and argued. We would not wish it to be thought that

we give leave because we are doubtful as to the outcome. We think it right to accept the undertaking offered by Mr Jones to submit papers for appeal to the House of Lords by close of business on Monday. We shall grant the applicant's costs out of central funds.

131. We certify the point of law I have indicated. The certificate is that "a point of law of general public importance is involved in the court's decision, namely the proper interpretation and scope of the immunity enjoyed by a former head of state from arrest and extradition proceedings in the United Kingdom in respect of acts committed while he was head of state."

132. I think it would be helpful if counsel would, as it were, give their assent to the form of order drawn up at the end of these proceedings so that there is no room for doubt or argument.