Session 1998-99

House of Lords

Judgment - In Re Pinochet

HOUSE OF LORDS

Lord Browne-Wilkinson Lord Goff of Chieveley
Lord Nolan Lord Hope of Craighead Lord Hutton

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

IN RE PINOCHET

Oral Judgment: **17 December 1998**

Reasons: **15 January 1999**

LORD BROWNE-WILKINSON

My Lords,

Introduction

This petition has been brought by Senator Pinochet to set aside an order made by your Lordships on 25 November 1998. It is said that the links between one of the members of the Appellate Committee who heard the appeal, Lord Hoffmann, and Amnesty International ("AI") were such as to give the appearance that he might have been biased against Senator Pinochet. On 17 December 1998 your Lordships set aside the order of 25 November 1998 for reasons to be given later. These are the reasons that led me to that conclusion.

Background facts

Senator Pinochet was the Head of State of Chile from 11 September 1973 until 11 March 1990. It is alleged that during that period there took place in Chile various crimes against humanity (torture, hostage taking and murder) for which he was knowingly responsible.

In October 1998 Senator Pinochet was in this country receiving medical treatment. In October and November 1998 the judicial authorities in Spain issued international warrants for his arrest to enable his extradition to Spain to face trial for those alleged offences. The Spanish Supreme Court has held that the courts of Spain have jurisdiction to try him. Pursuant to those international warrants, on 16 and 23 October 1998 Metropolitan Stipendiary Magistrates issued two provisional warrants for his arrest under section 8(1)(*b*) of the Extradition Act 1989. Senator Pinochet was arrested. He immediately applied to

the Queen's Bench Divisional Court to quash the warrants. The warrant of 16 October was quashed and nothing further turns on that warrant. The second warrant of 23 October 1998 was quashed by an order of the Divisional Court of the Queen's Bench Division (Lord Bingham of Cornhill C.J., Collins and Richards JJ.) However, the quashing of the second warrant was stayed to enable an appeal to be taken to your Lordships' House on the question certified by the Divisional Court as to "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."

As that question indicates, the principle point at issue in the main proceedings in both the Divisional Court and this House was as to the immunity, if any, enjoyed by Senator Pinochet as a *past* Head of State in respect of the crimes against humanity for which his extradition was sought. The Crown Prosecution Service (which is conducting the proceedings on behalf of the Spanish Government) while accepting that a foreign Head of State would, during his tenure of office, be immune from arrest or trial in respect of the matters alleged, contends that once he ceased to be Head of State his immunity for crimes against humanity also ceased and he can be arrested and prosecuted for such crimes committed during the period he was Head of State. On the other side, Senator Pinochet contends that his immunity in respect of acts done whilst he was Head of State persists even after he has ceased to be Head of State. The position therefore is that if the view of the CPS (on behalf of the Spanish Government) prevails, it was lawful to arrest Senator Pinochet in October and (subject to any other valid objections and the completion of the extradition process) it will be lawful for the Secretary of State in his discretion to extradite Senator Pinochet to Spain to stand trial for the alleged crimes. If, on the other hand, the contentions of Senator Pinochet are correct, he has at all times been and still is immune from arrest in this country for the alleged crimes. He could never be extradited for those crimes to Spain or any other country. He would have to be immediately released and allowed to return to Chile as he wishes to do.

The court proceedings.

The Divisional Court having unanimously quashed the provisional warrant of 23 October on the ground that Senator Pinochet was entitled to immunity, he was thereupon free to return to Chile subject only to the stay to permit the appeal to your Lordships' House. The matter proceeded to your Lordships' House with great speed. It was heard on 4, 5 and 9-12 November 1998 by a committee consisting of Lord Slynn of Hadley, Lord Lloyd of Berwick, Lord Nicholls of Birkenhead, Lord Steyn and Lord Hoffmann. However, before the main hearing of the appeal, there was an interlocutory decision of the greatest importance for the purposes of the present application. Amnesty International ("AI"), two other human rights bodies and three individuals petitioned for leave to intervene in the appeal. Such leave was granted by a committee consisting of Lord Slynn, Lord Nicholls and Lord Steyn subject to any protest being made by other parties at the

start of the main hearing. No such protest having been made AI accordingly became an intervener in the appeal. At the hearing of the appeal AI not only put in written submissions but was also represented by counsel, Professor Brownlie Q.C., Michael Fordham, Owen Davies and Frances Webber. Professor Brownlie addressed the committee on behalf of AI supporting the appeal.

The hearing of this case, both before the Divisional Court and in your Lordships' House, produced an unprecedent degree of public interest not only in this country but worldwide. The case raises fundamental issues of public international law and their interaction with the domestic law of this country. The conduct of Senator Pinochet and his regime have been highly contentious and emotive matters. There are many Chileans and supporters of human rights who have no doubt as to his guilt and are anxious to bring him to trial somewhere in the world. There are many others who are his supporters and believe that he was the saviour of Chile. Yet a third group believe that, whatever the truth of the matter, it is a matter for Chile to sort out internally and not for third parties to interfere in the delicate balance of contemporary Chilean politics by seeking to try him outside Chile.

This wide public interest was reflected in the very large number attending the hearings before the Appellate Committee including representatives of the world press. The Palace of Westminster was picketed throughout. The announcement of the final result gave rise to worldwide reactions. In the eyes of very many people the issue was not a mere legal issue but whether or not Senator Pinochet was to stand trial and therefore, so it was thought, the cause of human rights triumph. Although the members of the Appellate Committee were in no doubt as to their function, the issue for many people was one of moral, not legal, right or wrong.

The decision and afterwards.

Judgment in your Lordships' House was given on 25 November 1998. The appeal was allowed by a majority of three to two and your Lordships' House restored the second warrant of 23 October 1998. Of the majority, Lord Nicholls and Lord Steyn each delivered speeches holding that Senator Pinochet was not entitled to immunity: Lord Hoffmann agreed with their speeches but did not give separate reasons for allowing the appeal. Lord Slynn and Lord Lloyd each gave separate speeches setting out the reasons for their dissent.

As a result of this decision, Senator Pinochet was required to remain in this country to await the decision of the Home Secretary whether to authorise the continuation of the proceedings for his extradition under section 7(1) of the Extradition Act 1989. The Home Secretary had until the 11 December 1998 to make that decision, but he required anyone wishing to make representations on the point to do so by the 30 November 1998.

The link between Lord Hoffmann and AI

It appears that neither Senator Pinochet nor (save to a very limited extent) his legal advisers were aware of any connection between Lord Hoffmann and AI until after the judgment was given on 25 November. Two members of the legal team recalled that they had heard rumours that Lord Hoffmann's wife was connected with AI in some way. During the Newsnight programme on television on 25 November, an allegation to that effect was made by a speaker in Chile. On that limited information the representations made on Senator Pinochet's behalf to the Home Secretary on 30 November drew attention to Lady Hoffmann's position and contained a detailed consideration of the relevant law of bias.

It then read:

> "It is submitted therefore that the Secretary of State should not have any regard to the decision of Lord Hoffmann. The authorities make it plain that this is the appropriate approach to a decision that is affected by bias. Since the bias was in the House of Lords, the Secretary of State represents the senator's only domestic protection. Absent domestic protection the senator will have to invoke the jurisdiction of the European Court of Human Rights."

After the representations had been made to the Home Office, Senator Pinochet's legal advisers received a letter dated 1 December 1998 from the solicitors acting for AI written in response to a request for information as to Lord Hoffmann's links. The letter of 1 December, so far as relevant, reads as follows:

> "Further to our letter of 27 November, we are informed by our clients, Amnesty International, that Lady Hoffmann has been working at their International Secretariat since 1977. She has always been employed in administrative positions, primarily in their department dealing with press and publications. She moved to her present position of Programme Assistant to the Director of the Media and Audio Visual Programme when this position was established in 1994.
>
> "Lady Hoffmann provides administrative support to the Programme, including some receptionist duties. She has not been consulted or otherwise involved in any substantive discussions or decisions by Amnesty International, including in relation to the Pinochet case."

On 7 December a man anonymously telephoned Senator Pinochet's solicitors alleging that Lord Hoffmann was a Director of the Amnesty International Charitable Trust. That allegation was repeated in a newspaper report on 8 December. Senator Pinochet's solicitors informed the Home Secretary of these allegations. On 8 December they received a letter from the solicitors acting for AI dated 7 December which reads, so far as relevant, as follows:

"On further consideration, our client, Amnesty International have instructed us that after contacting Lord Hoffmann over the weekend both he and they believe that the following information about his connection with Amnesty International's charitable work should be provided to you.

"Lord Hoffmann is a Director and Chairperson of Amnesty International Charity Limited (AICL), a registered charity incorporated on 7 April 1986 to undertake those aspects of the work of Amnesty International Limited (AIL) which are charitable under UK law. AICL files reports with Companies' House and the Charity Commissioners as required by UK law. AICL funds a proportion of the charitable activities undertaken independently by AIL. AIL's board is composed of Amnesty International's Secretary General and two Deputy Secretaries General.

"Since 1990 Lord Hoffmann and Peter Duffy Q.C. have been the two Directors of AICL. They are neither employed nor remunerated by either AICL or AIL. They have not been consulted and have not had any other role in Amnesty International's interventions in the case of Pinochet. Lord Hoffmann is not a member of Amnesty International.

"In addition, in 1997 Lord Hoffmann helped in the organisation of a fund raising appeal for a new building for Amnesty International UK. He helped organise this appeal together with other senior legal figures, including the Lord Chief Justice, Lord Bingham. In February your firm contributed £1,000 to this appeal. You should also note that in 1982 Lord Hoffmann, when practising at the Bar, appeared in the Chancery Division for Amnesty International UK."

Further information relating to AICL and its relationship with Lord Hoffmann and AI is given below. Mr. Alun Jones Q.C. for the CPS does not contend that either Senator Pinochet or his legal advisors had any knowledge of Lord Hoffmann's position as a Director of AICL until receipt of that letter.

Senator Pinochet's solicitors informed the Home Secretary of the contents of the letter dated 7 December. The Home Secretary signed the Authority to Proceed on 9 December 1998. He also gave reasons for his decision, attaching no weight to the allegations of bias or apparent bias made by Senator Pinochet.

On 10 December 1998, Senator Pinochet lodged the present petition asking that the order of 25 November 1998 should either be set aside completely or the opinion of Lord Hoffmann should be declared to be of no effect. The sole ground relied upon was that Lord Hoffmann's links with AI were such as to give the appearance of possible bias. It is important to stress that Senator Pinochet makes no allegation of *actual bias* against Lord Hoffmann; his claim is based on the requirement that justice should be seen to be done as well as actually being done. There is no allegation that any other member of the Committee has fallen short in the performance of his judicial duties.

Amnesty International and its constituent parts

Before considering the arguments advanced before your Lordships, it is necessary to give some detail of the organisation of AI and its subsidiary and constituent bodies. Most of the information which follows is derived from the Directors' Reports and Notes to the Accounts of AICL which have been put in evidence.

AI itself is an unincorporated, non profit making organisation founded in 1961 with the object of securing throughout the world the observance of the provisions of the Universal Declaration of Human Rights in regard to prisoners of conscience. It is regulated by a document known as the Statute of Amnesty International. AI consists of sections in different countries throughout the world and its International Headquarters in London. Delegates of the Sections meet periodically at the International Council Meetings to co-ordinate their activities and to elect an International Executive Committee to implement the Council's decisions. The International Headquarters in London is responsible to the International Executive Committee. It is funded principally by the Sections for the purpose of furthering the work of AI on a worldwide basis and to assist the work of Sections in specific countries as necessary. The work of the International Headquarters is undertaken through two United Kingdom registered companies Amnesty International Limited ("AIL") and Amnesty International Charity Limited ("AICL").

AIL is an English limited company incorporated to assist in furthering the objectives of AI and to carry out the aspects of the work of the International Headquarters which are not charitable.

AICL is a company limited by guarantee and also a registered charity. In *McGovern v. Attorney-General* [1982] Ch. 321, Slade J. held that a trust established by AI to promote certain of its objects was not charitable because it was established for political purposes; however the judge indicated that a trust for research into the observance of human rights and the dissemination of the results of such research could be charitable. It appears that AICL was incorporated on 7 April 1986 to carry out such of the purposes of AI as were charitable. Clause 3 of the Memorandum of Association of AICL provides:

> "Having regard to the Statute for the time being of Amnesty International, the objects for which the Company is established are:
>
> (a) To promote research into the maintenance and observance of human rights and to publish the results of such research.
>
> (b) To provide relief to needy victims of breaches of human rights by appropriate charitable (and in particular medical, rehabilitational or

financial) assistance.

(c) To procure the abolition of torture, extra judicial execution and disappearance. . . ."

Under Article 3(a) of AICL the members of the Company are all the elected members for the time being of the International Executive Committee of Amnesty International and nobody else. The Directors are appointed by and removable by the members in general meetings. Since 8 December 1990 Lord Hoffmann and Mr. Duffy Q.C. have been the sole Directors, Lord Hoffmann at some stage becoming the Chairperson.

There are complicated arrangements between the International Headquarters of AI, AICL and AIL as to the discharge of their respective functions. From the reports of the Directors and the notes to the annual accounts, it appears that, although the system has changed slightly from time to time, the current system is as follows. The International Headquarters of AI are in London and the premises are, at least in part, shared with AICL and AIL. The conduct of AI's International Headquarters is (subject to the direction of the International Executive Committee) in the hands of AIL. AICL commissions AIL to undertake charitable activities of the kind which fall within the objects of AI. The Directors of AICL then resolve to expend the sums that they have received from AI Sections or elsewhere in funding such charitable work as AIL performs. AIL then reports retrospectively to AICL as to the monies expended and AICL votes sums to AIL for such part of AIL's work as can properly be regarded as charitable. It was confirmed in the course of argument that certain work done by AIL would therefore be treated as in part done by AIL on its own behalf and in part on behalf of AICL.

I can give one example of the close interaction between the functions of AICL and AI. The report of the Directors of AICL for the year ended 31 December 1993 records that AICL commissioned AIL to carry out charitable activities on its behalf and records as being included in the work of AICL certain research publications. One such publication related to Chile and referred to a report issued as an AI report in 1993. Such 1993 reports covers not only the occurrence and nature of breaches of human rights within Chile, but also the progress of cases being brought against those alleged to have infringed human rights by torture and otherwise in the courts of Chile. It records that "no one was convicted during the year for past human rights violations. The military courts continued to claim jurisdiction over human rights cases in civilian courts and to close cases covered by the 1978 Amnesty law." It also records "Amnesty International continued to call for full investigation into human rights violations and for those responsible to be brought to justice. The organisation also continued to call for the abolition of the death penalty." Again, the report stated that "Amnesty International included references to its concerns about past human rights violations against indigenous peoples in Chile and the lack of

accountability of those responsible." Therefore AICL was involved in the reports of AI urging the punishment of those guilty in Chile for past breaches of human rights and also referring to such work as being part of the work that it supported.

The Directors of AICL do not receive any remuneration. Nor do they take any part in the policy-making activities of AI. Lord Hoffmann is not a member of AI or of any other body connected with AI.

In addition to the AI related bodies that I have mentioned, there are other organisations which are not directly relevant to the present case. However, I should mention another charitable company connected with AI and mentioned in the papers, namely, "Amnesty International U.K. Section Charitable Trust" registered as a company under number 3139939 and as a charity under 1051681. That was a company incorporated in 1995 and, so far as I can see, has nothing directly to do with the present case.

The parties' submissions

Miss Montgomery Q.C. in her very persuasive submissions on behalf of Senator Pinochet contended:

1. That, although there was no exact precedent, your Lordships' House must have jurisdiction to set aside its own orders where they have been improperly made, since there is no other court which could correct such impropriety.

2. That (applying the test in *Reg. v. Gough* [1993] A.C. 646) the links between Lord Hoffmann and AI were such that there was a real danger that Lord Hoffmann was biased in favour of AI or alternatively (applying the test in *Webb v. The Queen* (1994) 181 C.L.R. 41) that such links give rise to a reasonable apprehension or suspicion on the part of a fair minded and informed member of the public that Lord Hoffmann might have been so biased.

On the other side, Mr. Alun Jones Q.C. accepted that your Lordships had power to revoke an earlier order of this House but contended that there was no case for such revocation here. The applicable test of bias, he submitted, was that recently laid down by your Lordships in *Reg. v. Gough* and it was impossible to say that there was a real danger that Lord Hoffmann had been biased against Senator Pinochet. He further submitted that, by relying on the allegations of bias in making submissions to the Home Secretary, Senator Pinochet had elected to adopt the Home Secretary as the correct tribunal to adjudicate on the issue of apparent bias. He had thereby waived his right to complain before your Lordships of such bias. Expressed in other words, he was submitting that the petition was an abuse of process by Senator Pinochet. Mr. Duffy Q.C. for AI (but not for AICL) supported the case put forward by Mr. Alun Jones.

Conclusions

1. *Jurisdiction*

As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.

In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered. In *Cassell & Co. Ltd. v. Broome (No. 2)* [1972] A.C. 1136 your Lordships varied an order for costs already made by the House in circumstances where the parties had not had a fair opportunity to address argument on the point.

However, it should be made clear that the House will not reopen any appeal save in circumstances where, through no fault of a party, he or she has been subjected to an unfair procedure. Where an order has been made by the House in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong.

2. *Apparent bias*

As I have said, Senator Pinochet does not allege that Lord Hoffmann was in fact biased. The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased, that is to say, it is alleged that there is an appearance of bias not actual bias.

The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

In my judgment, this case falls within the first category of case, viz where the judge is disqualified because he is a judge in his own cause. In such a case, once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure: see Shetreet, *Judges on Trial*, (1976), p. 303; *De Smith, Woolf & Jowel, Judicial Review of Administrative Action*, 5th ed. (1995), p. 525. I will call this "automatic disqualification."

In *Dimes v. Proprietors of Grand Junction Canal* (1852) 3 H.L. Cas. 759, the then Lord Chancellor, Lord Cottenham, owned a substantial shareholding in the defendant canal which was an incorporated body. In the action the Lord Chancellor sat on appeal from the Vice-Chancellor, whose judgment in favour of the company he affirmed. There was an appeal to your Lordships' House on the grounds that the Lord Chancellor was disqualified. Their Lordships consulted the judges who advised that Lord Cottenham was disqualified from sitting as a judge in the cause because he had an interest in the suit: at p. 786. This advice was unanimously accepted by their Lordships. There was no inquiry by the court as to whether a reasonable man would consider Lord Cottenham to be biased and no inquiry as to the circumstances which led to Lord Cottenham sitting. Lord Campbell said, at p. 793:

> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause *in which he is a party*, but applies to a cause in which he has an interest." (Emphasis added)

On occasion, this proposition is elided so as to omit all references to the disqualification of a judge who is a party to the suit: see, for example, *Reg. v. Rand* (1866) L.R. 1 Q.B. 230; *Reg. v. Gough* at p. 661. This does not mean that a judge who is a party to a suit is not disqualified just because the suit does not involve a financial interest. The authorities cited in the *Dimes* case show how the principle developed. The starting-point was the case in which a judge was indeed purporting to decide a case in which he was a party. This was held to be absolutely prohibited. That absolute prohibition was then extended to cases where, although not nominally a party, the judge had an interest in the outcome.

The importance of this point in the present case is this. Neither AI, nor AICL, have any financial interest in the outcome of this litigation. We are here confronted, as was Lord Hoffmann, with a novel situation where the outcome of the litigation did not lead to financial benefit to anyone. The interest of AI in the litigation was not financial; it was its interest in achieving the trial and possible

conviction of Senator Pinochet for crimes against humanity.

By seeking to intervene in this appeal and being allowed so to intervene, in practice AI became a party to the appeal. Therefore if, in the circumstances, it is right to treat Lord Hoffmann as being the alter ego of AI and therefore a judge in his own cause, then he must have been automatically disqualified on the grounds that he was a party to the appeal. Alternatively, even if it be not right to say that Lord Hoffmann was a party to the appeal as such, the question then arises whether, in non financial litigation, anything other than a financial or proprietary interest in the outcome is sufficient automatically to disqualify a man from sitting as judge in the cause.

Are the facts such as to require Lord Hoffmann to be treated as being himself a party to this appeal? The facts are striking and unusual. One of the parties to the appeal is an unincorporated association, AI. One of the constituent parts of that unincorporated association is AICL. AICL was established, for tax purposes, to carry out part of the functions of AI--those parts which were charitable--which had previously been carried on either by AI itself or by AIL. Lord Hoffmann is a Director and chairman of AICL which is wholly controlled by AI, since its members, (who ultimately control it) are all the members of the International Executive Committee of AI. A large part of the work of AI is, as a matter of strict law, carried on by AICL which instructs AIL to do the work on its behalf. In reality, AI, AICL and AIL are a close-knit group carrying on the work of AI.

However, close as these links are, I do not think it would be right to identify Lord Hoffmann personally as being a party to the appeal. He is closely linked to AI but he is not in fact AI. Although this is an area in which legal technicality is particularly to be avoided, it cannot be ignored that Lord Hoffmann took no part in running AI. Lord Hoffmann, AICL and the Executive Committee of AI are in law separate people.

Then is this a case in which it can be said that Lord Hoffmann had an "interest" which must lead to his automatic disqualification? Hitherto only pecuniary and proprietary interests have led to automatic disqualification. But, as I have indicated, this litigation is most unusual. It is not civil litigation but criminal litigation. Most unusually, by allowing AI to intervene, there is a party to a criminal cause or matter who is neither prosecutor nor accused. That party, AI, shares with the Government of Spain and the CPS, not a financial interest but an interest to establish that there is no immunity for ex-Heads of State in relation to crimes against humanity. The interest of these parties is to procure Senator Pinochet's extradition and trial--a non-pecuniary interest. So far as AICL is concerned, clause 3(c) of its Memorandum provides that one of its objects is "to procure the abolition of torture, extra-judicial execution and disappearance". AI has, amongst other objects, the same objects. Although AICL, as a charity, cannot campaign to change the law, it is concerned by other means to procure the abolition of these crimes against humanity. In my opinion, therefore, AICL

plainly had a non-pecuniary interest, to establish that Senator Pinochet was not immune.

That being the case, the question is whether in the very unusual circumstances of this case a non-pecuniary interest to achieve a particular result is sufficient to give rise to automatic disqualification and, if so, whether the fact that AICL had such an interest necessarily leads to the conclusion that Lord Hoffmann, as a Director of AICL, was automatically disqualified from sitting on the appeal? My Lords, in my judgment, although the cases have all dealt with automatic disqualification on the grounds of pecuniary interest, there is no good reason in principle for so limiting automatic disqualification. The rationale of the whole rule is that a man cannot be a judge in his own cause. In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties. Thus in my opinion if Lord Hoffmann had been a member of AI he would have been automatically disqualified because of his non-pecuniary interest in establishing that Senator Pinochet was not entitled to immunity. Indeed, so much I understood to have been conceded by Mr. Duffy.

Can it make any difference that, instead of being a direct member of AI, Lord Hoffmann is a Director of AICL, that is of a company which is wholly controlled by AI and is carrying on much of its work? Surely not. The substance of the matter is that AI, AIL and AICL are all various parts of an entity or movement working in different fields towards the same goals. If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically disqualifies a judge who is involved, whether personally or as a Director of a company, in promoting the same causes in the same organisation as is a party to the suit. There is no room for fine distinctions if Lord Hewart's famous dictum is to be observed: it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." (see *Rex v. Sussex Justices, Ex parte McCarthy* [1924] K.B. 256, 259)

Since, in my judgment, the relationship between AI, AICL and Lord Hoffmann leads to the automatic disqualification of Lord Hoffmann to sit on the hearing of the appeal, it is unnecessary to consider the other factors which were relied on by Miss Montgomery, viz. the position of Lady Hoffmann as an employee of AI and the fact that Lord Hoffmann was involved in the recent appeal for funds for Amnesty. Those factors might have been relevant if Senator Pinochet had been required to show a real danger or reasonable suspicion of bias. But since the disqualification is automatic and does not depend in any way on an implication of bias, it is unnecessary to consider these factors. I do, however, wish to make

it clear (if I have not already done so) that my decision is not that Lord Hoffmann has been guilty of bias of any kind: he was disqualified as a matter of law automatically by reason of his Directorship of AICL, a company controlled by a party, AI.

For the same reason, it is unnecessary to determine whether the test of apparent bias laid down in *Reg. v. Gough* ("is there in the view of the Court a real danger that the judge was biased?") needs to be reviewed in the light of subsequent decisions. Decisions in Canada, Australia and New Zealand have either refused to apply the test in *Reg. v. Gough*, or modified it so as to make the relevant test the question whether the events in question give rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the judge was not impartial: see, for example, the High Court of Australia in *Webb v. The Queen*. It has also been suggested that the test in *Reg. v. Gough* in some way impinges on the requirement of Lord Hewart's dictum that justice should appear to be done: see *Reg. v. Inner West London Coroner, Ex Parte Dallaglio* [1994] 4 All E.R. 139 at page 152 A to B. Since such a review is unnecessary for the determination of the present case, I prefer to express no view on it.

It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25 November 1998 would lead to a position where judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (1) that AI was a party to the appeal; (2) that AI was joined in order to argue for a particular result; (3) the judge was a Director of a charity closely allied to AI and sharing, in this respect, AI's objects. Only in cases where a judge is taking an active role as trustee or Director of a charity which is closely allied to and acting with a party to the litigation should a judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the judge would be well advised to disclose a possible interest.

Finally on this aspect of the case, we were asked to state in giving judgment what had been said and done within the Appellate Committee in relation to Amnesty International during the hearing leading to the Order of 25 November. As is apparent from what I have said, such matters are irrelevant to what we have to decide: in the absence of any disclosure to the parties of Lord Hoffmann's involvement with AI, such involvement either did or did not in law disqualify him regardless of what happened within the Appellate Committee. We therefore did not investigate those matters and make no findings as to them.

Election, Waiver, Abuse of Process

Mr. Alun Jones submitted that by raising with the Home Secretary the possible bias of Lord Hoffmann as a ground for not authorising the extradition to proceed, Senator Pinochet had elected to choose the Home Secretary rather than your Lordships' House as the arbiter as to whether such bias did or did not exist. Consequently, he submitted, Senator Pinochet had waived his right to petition your Lordships and, by doing so immediately after the Home Secretary had rejected the submission, was committing an abuse of the process of the House.

This submission is bound to fail on a number of different grounds, of which I need mention only two. First, Senator Pinochet would only be put to his election as between two alternative courses to adopt. I cannot see that there are two such courses in the present case, since the Home Secretary had no power in the matter. He could not set aside the order of 25 November and as long as such order stood, the Home Secretary was bound to accept it as stating the law. Secondly, all three concepts--election, waiver and abuse of process--require that the person said to have elected etc. has acted freely and in full knowledge of the facts. Not until 8 December 1998 did Senator Pinochet's solicitors know anything of Lord Hoffmann's position as a Director and Chairman of AICL. Even then they did not know anything about AICL and its constitution. To say that by hurriedly notifying the Home Secretary of the contents of the letter from AI's solicitors, Senator Pinochet had elected to pursue the point solely before the Home Secretary is unrealistic. Senator Pinochet had not yet had time to find out anything about the circumstances beyond the bare facts disclosed in the letter.

Result

It was for these reasons and the reasons given by my noble and learned friend Lord Goff of Chieveley that I reluctantly felt bound to set aside the order of 25 November 1998. It was appropriate to direct a re-hearing of the appeal before a differently constituted Committee, so that on the re-hearing the parties were not faced with a Committee four of whom had already expressed their conclusion on the points at issue.

LORD GOFF OF CHIEVELEY

My Lords,

I have had the opportunity of reading in draft the opinion prepared by my noble and learned friend, Lord Browne-Wilkinson. It was for the like reasons to those given by him that I agreed that the order of your Lordships' House in this matter dated 25 November 1998 should be set aside and that a rehearing of the appeal should take place before a differently constituted Committee. Even so, having regard to the unusual nature of this case, I propose to set out briefly in my own words the reasons why I reached that conclusion.

Like my noble and learned friend, I am of the opinion that the principle which governs this matter is that a man shall not be a judge in his own cause--nemo judex in sua causa: see *Dimes v. Grand Junction Canal* (1852) 3 H.L.C. 759, 793, *per* Lord Campbell. As stated by Lord Campbell in that case at p. 793, the principle is not confined to a cause to which the judge is a party, but applies also to a cause in which he has an interest. Thus, for example, a judge who holds shares in a company which is a party to the litigation is caught by the principle, not because he himself is a party to the litigation (which he is not), but because he has by virtue of his shareholding an interest in the cause. That was indeed the ratio decidendi of the famous case of *Dimes* itself. In that case the then Lord Chancellor, Lord Cottenham, affirmed an order granted by the Vice-Chancellor granting relief to a company in which, unknown to the defendant and forgotten by himself, he held a substantial shareholding. It was decided, following the opinion of the judges, that Lord Cottenham was disqualified, by reason of his interest in the cause, from adjudicating in the matter, and that his order was for that reason voidable and must be set aside. Such a conclusion must follow, subject only to waiver by the party or parties to the proceedings thereby affected.

In the present case your Lordships are not concerned with a judge who is a party to the cause, nor with one who has a financial interest in a party to the cause or in the outcome of the cause. Your Lordships are concerned with a case in which a judge is closely connected with a party to the proceedings. This situation has arisen because, as my noble and learned friend has described, Amnesty International ("AI") was given leave to intervene in the proceedings; and, whether or not AI thereby became technically a party to the proceedings, it so participated in the proceedings, actively supporting the cause of one party (the Government of Spain, represented by the Crown Prosecution Service) against another (Senator Pinochet), that it must be treated as a party. Furthermore, Lord Hoffmann is a Director and Chairperson of Amnesty International Charity Limited ("AICL"). AICL and Amnesty International Limited ("AIL") are United Kingdom companies through which the work of the International Headquarters of AI in London is undertaken, AICL having been incorporated to carry out those purposes of AI which are charitable under UK law. Neither Senator Pinochet nor the lawyers acting for him were aware of the connection between Lord Hoffmann and AI until after judgment was given on 25 November 1998.

My noble and learned friend has described in lucid detail the working relationship between AICL, AIL and AI, both generally and in relation to Chile. It is unnecessary for me to do more than state that not only was AICL deeply involved in the work of AI, commissioning activities falling within the objects of AI which were charitable, but that it did so specifically in relation to research publications including one relating to Chile reporting on breaches of human rights (by torture and otherwise) in Chile and calling for those responsible to be brought to justice. It is in these circumstances that we have to consider the position of Lord Hoffmann, not as a person who is himself a party to the proceedings or who has a financial interest in such a party or in the outcome of the proceedings, but as a person who is, as a director and chairperson of AICL, closely connected with AI which is, or must be treated as, a party to the proceedings. The question which arises is whether his connection with that party will (subject to waiver)

itself disqualify him from sitting as a judge in the proceedings, in the same way as a significant shareholding in a party will do, and so require that the order made upon the outcome of the proceedings must be set aside.

Such a question could in theory arise, for example, in relation to a senior executive of a body which is a party to the proceedings, who holds no shares in that body; but it is, I believe, only conceivable that it will do so where the body in question is a charitable organisation. He will by reason of his position be committed to the well-being of the charity, and to the fulfilment by the charity of its charitable objects. He may for that reason properly be said to have an interest in the outcome of the litigation, though he has no financial interest, and so to be disqualified from sitting as a judge in the proceedings. The cause is "a cause in which he has an interest", in the words of Lord Campbell in *Dimes* at p. 793. It follows that in this context the relevant interest need not be a financial interest. This is the view expressed by Professor Shetreet in his book *Judges on Trial* at p. 310, where he states that "A judge may have to disqualify himself by reason of his association with a body that institutes or defends the suit", giving as an example the chairman or member of the board of a charitable organisation.

Let me next take the position of Lord Hoffmann in the present case. He was not a member of the governing body of AI, which is or is to be treated as a party to the present proceedings: he was chairperson of an associated body, AICL, which is not a party. However, on the evidence, it is plain that there is a close relationship between AI, AIL and AICL. AICL was formed following the decision in *McGovern v. Attorney-General* [1982] Ch. 321, to carry out the purposes of AI which were charitable, no doubt with the sensible object of achieving a tax saving. So the division of function between AIL and AICL was that the latter was to carry out those aspects of the work of the International Headquarters of AI which were charitable, leaving it to AIL to carry out the remainder, that division being made for fiscal reasons. It follows that AI, AIL and AICL can together be described as being, in practical terms, one organisation, of which AICL forms part. The effect for present purposes is that Lord Hoffmann, as chairperson of one member of that organisation, AICL, is so closely associated with another member of that organisation, AI, that he can properly be said to have an interest in the outcome of proceedings to which AI has become party. This conclusion is reinforced, so far as the present case is concerned, by the evidence of AICL commissioning a report by AI relating to breaches of human rights in Chile, and calling for those responsible to be brought to justice. It follows that Lord Hoffmann had an interest in the outcome of the present proceedings and so was disqualified from sitting as a judge in those proceedings.

It is important to observe that this conclusion is, in my opinion, in no way dependent on Lord Hoffmann personally holding any view, or having any objective, regarding the question whether Senator Pinochet should be extradited, nor is it dependent on any bias or apparent bias on his part. Any suggestion of bias on his part was, of course, disclaimed by those representing Senator Pinochet. It arises simply from Lord Hoffmann's involvement in AICL; the close relationship between AI, AIL and AICL, which here means that for present purposes they can be regarded as being, in practical terms, one

organisation; and the participation of AI in the present proceedings in which as a result it either is, or must be treated as, a party.

LORD NOLAN

My Lords,

I agree with the views expressed by noble and learned friends Lord Browne-Wilkinson and Lord Goff of Chieveley. In my judgment the decision of 25 November had to be set aside for the reasons which they give.

I would only add that in any case where the impartiality of a judge is in question the appearance of the matter is just as important as the reality.

LORD HOPE OF CRAIGHEAD

My Lords,

I have had the advantage of reading in draft the speeches which have been prepared by my noble and learned friends, Lord Browne-Wilkinson and Lord Goff of Chieveley. For the reasons which they have given I also was satisfied that the earlier decision of this House cannot stand and must be set aside. But in view of the importance of the case and its wider implications, I should like to add these observations.

One of the cornerstones of our legal system is the impartiality of the tribunals by which justice is administered. In civil litigation the guiding principle is that no one may be a judge in his own cause: nemo debet esse judex in propria causa. It is a principle which is applied much more widely than a literal interpretation of the words might suggest. It is not confined to cases where the judge is a party to the proceedings. It is applied also to cases where he has a personal or pecuniary interest in the outcome, however small. In *London and North-Western Railway Co. v. Lindsay* (1858) 3 Macq. 99 the same question as that which arose in *Dimes v. Proprietors of Grand Junction Canal* (1852) 3 H.L.Cas. 759 was considered in an appeal from the Court of Session to this House. Lord Wensleydale stated that, as he was a shareholder in the appellant company, he proposed to retire and take no part in the judgment. The Lord Chancellor said that he regretted that this step seemed to be necessary. Although counsel stated that he had no objection, it was thought better that any difficulty that might arise should be avoided and Lord Wensleydale retired.

In *Sellar v. Highland Railway Co.* 1919 S.C. (H.L.) 19, the same rule was applied where a person who had been appointed to act as one of the arbiters in a dispute between the proprietors of certain fishings and the railway company was the holder of a small number of ordinary shares in the railway company. Lord Buckmaster, after referring to *Dimes* and *Lindsay*, gave this explanation of the rule at pp. 20-21:

> "The law remains unaltered and unvarying today, and, although it is obvious that the extended growth of personal property and the wide distribution of interests in vast commercial concerns may render the application of the rule increasingly irksome, it is none the less a rule which I for my part should greatly regret to see even in the slightest degree relaxed. The importance of preserving the administration of justice from anything which can even by remote imagination infer a bias or interest in the Judge upon whom falls the solemn duty of interpreting the law is so grave that any small inconvenience experienced in its preservation may be cheerfully endured. In practice also the difficulty is one easily overcome, because, directly the fact is stated, it is common practice that counsel on each side agree that the existence of the disqualification shall afford no objection to the prosecution of the suit, and the matter proceeds in the ordinary way, but, if the disclosure is not made, either through neglect or inadvertence, the judgment becomes voidable and may be set aside."

As my noble and learned friend Lord Goff of Chieveley said in *Reg. v. Gough* [1993] A.C. 646, 661, the nature of the interest is such that public confidence in the administration of justice requires that the judge must withdraw from the case or, if he fails to disclose his interest and sits in judgment upon it, the decision cannot stand. It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath. The purpose of the disqualification is to preserve the administration of justice from any suspicion of impartiality. The disqualification does not follow automatically in the strict sense of that word, because the parties to the suit may waive the objection. But no further investigation is necessary and, if the interest is not disclosed, the consequence is inevitable. In practice the application of this rule is so well understood and so consistently observed that no case has arisen in the course of this century where a decision of any of the courts exercising a civil jurisdiction in any part of the United Kingdom has had to be set aside on the ground that there was a breach of it.

In the present case we are concerned not with civil litigation but with a decision taken in proceedings for extradition on criminal charges. It is only in the most unusual circumstances that a judge who was sitting in criminal proceedings would find himself open to the objection that he was acting as a judge in his own cause. In principle, if it could be shown that he had a personal or pecuniary interest in the outcome, the maxim would apply. But no case was cited to us, and I am not aware of any, in which it has been applied hitherto in a criminal case. In practice judges are well aware that they should not sit in a case where they have even the slightest personal interest in it either as defendant or as prosecutor.

The ground of objection which has invariably been taken until now in criminal cases is based on that other principle which has its origin in the requirement of impartiality. This is that justice must not only be done; it must also be seen to be done. It covers a wider range of situations than that which is covered by the maxim that no-one may be a judge in his own cause. But it would be surprising if the application of that principle were to result in a test which was less exacting than that resulting from the application of the nemo judex in sua causa principle. Public confidence in the integrity of the administration

of justice is just as important, perhaps even more so, in criminal cases. Article 6(1) of the European Convention on Fundamental Rights and Freedoms makes no distinction between civil and criminal cases in its expression of the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Your Lordships were referred by Miss Montgomery Q.C. in the course of her argument to *Bradford v. McLeod* 1986 S.L.T. 244. This is one of only two reported cases, both of them from Scotland, in which a decision in a criminal case has been set aside because a full-time salaried judge was in breach of this principle. The other is *Doherty v. McGlennan* 1997 S.L.T. 444. In neither of these cases could it have been said that the sheriff had an interest in the case which disqualified him. They were cases where the sheriff either said or did something which gave rise to a reasonable suspicion about his impartiality.

The test which must be applied by the appellate courts of criminal jurisdiction in England and Wales to cases in which it is alleged that there has been a breach of this principle by a member of an inferior tribunal is different from that which is used in Scotland. The test which was approved by your Lordships' House in *Reg. v. Gough* [1993] A.C. 646 is whether there was a real danger of bias on the part of the relevant member of the tribunal. I think that the explanation for this choice of language lies in the fact that it was necessary in that case to formulate a test for the guidance of the lower appellate courts. The aim, as Lord Woolf explained at p. 673, was to avoid the quashing of convictions upon quite insubstantial grounds and the flimsiest pretexts of bias. In Scotland the High Court of Justiciary applies the test which was described in *Gough* as the reasonable suspicion test. In *Bradford v. McLeod* 1986 S.L.T. 244, 247 it adopted as representing the law of Scotland the rule which was expressed by Eve J. in *Law v. Chartered Institute of Patent Agents* [1919] 2 Ch. 276, 279 where he said:

> "Each member of the council in adjudicating on a complaint thereunder is performing a judicial duty, and he must bring to the discharge of that duty an unbiased and impartial mind. If he has a bias which renders him otherwise than an impartial judge he is disqualified from performing that duty. Nay, more (so jealous is the policy of our law of the purity of the administration of justice), if there are circumstances so affecting a person acting in a judicial capacity as to be calculated to create in the mind of a reasonable man a suspicion of that person's impartiality, those circumstances are themselves sufficient to disqualify although in fact no bias exists."

The Scottish system for dealing with criminal appeals is for all appeals from the courts of summary jurisdiction to go direct to the High Court of Justiciary in its appellate capacity. It is a simple, one-stop system, which absolves the High Court of Justiciary from the responsibility of giving guidance to inferior appellate courts as to how to deal with cases where questions have been raised about a tribunal's impartiality. Just as Eve J. may be thought to have been seeking to explain to members of the council of the Chartered Institute in simple language the test which they should apply to themselves in performing

their judicial duty, so also the concern of the High Court of Justiciary has been to give guidance to sheriffs and lay justices as to the standards which they should apply to themselves in the conduct of criminal cases. The familiar expression that justice must not only be done but must also be seen to be done serves a valuable function in that context.

Although the tests are described differently, their application by the appellate courts in each country is likely in practice to lead to results which are so similar as to be indistinguishable. Indeed it may be said of all the various tests which I have mentioned, including the maxim that no-one may be a judge in his own cause, that they are all founded upon the same broad principle. Where a judge is performing a judicial duty, he must not only bring to the discharge of that duty an unbiased and impartial mind. He must be seen to be impartial.

As for the facts of the present case, it seems to me that the conclusion is inescapable that Amnesty International has associated itself in these proceedings with the position of the prosecutor. The prosecution is not being brought in its name, but its interest in the case is to achieve the same result because it also seeks to bring Senator Pinochet to justice. This distinguishes its position fundamentally from that of other bodies which seek to uphold human rights without extending their objects to issues concerning personal responsibility. It has for many years conducted an international campaign against those individuals whom it has identified as having been responsible for torture, extra-judicial executions and disappearances. Its aim is that they should be made to suffer criminal penalties for such gross violations of human rights. It has chosen, by its intervention in these proceedings, to bring itself face to face with one of those individuals against whom it has for so long campaigned.

But everyone whom the prosecutor seeks to bring to justice is entitled to the protection of the law, however grave the offence or offences with which he is being prosecuted. Senator Pinochet is entitled to the judgment of an impartial and independent tribunal on the question which has been raised here as to his immunity. I think that the connections which existed between Lord Hoffmann and Amnesty International were of such a character, in view of their duration and proximity, as to disqualify him on this ground. In view of his links with Amnesty International as the chairman and a director of Amnesty International Charity Limited he could not be seen to be impartial. There has been no suggestion that he was actually biased. He had no financial or pecuniary interest in the outcome. But his relationship with Amnesty International was such that he was, in effect, acting as a judge in his own cause. I consider that his failure to disclose these connections leads inevitably to the conclusion that the decision to which he was a party must be set aside.

LORD HUTTON

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend Lord Browne-Wilkinson. I gratefully adopt his account of the matters (including the links

between Amnesty International and Lord Hoffmann) leading to the bringing of this petition by Senator Pinochet to set aside the order made by this House on 25 November 1998. I am in agreement with his reasoning and conclusions on the issue of the jurisdiction of this House to set aside that order and on the issues of election, waiver and abuse of process. In relation to the allegation made by Senator Pinochet, not that Lord Hoffmann was biased in fact, but that there was a real danger of bias or a reasonable apprehension or suspicion of bias because of Lord Hoffmann's links with Amnesty International, I am also in agreement with the reasoning and conclusion of Lord Browne-Wilkinson, and I wish to add some observations on this issue.

In the middle of the last century the Lord Chancellor, Lord Cottenham, had an interest as a shareholder in a canal company to the amount of several thousand pounds. The company filed a bill in equity seeking an injunction against the defendant who was unaware of Lord Cottenham's shareholding in the company. The injunction and the ancillary order sought were granted by the Vice-Chancellor and were subsequently affirmed by Lord Cottenham. The defendant subsequently discovered the interest of Lord Cottenham in the company and brought a motion to discharge the order made by him, and the matter ultimately came on for hearing before this House in *Dimes v. Proprietors of Grand Junction Canal* (1852) 3 H.L. Cas. 759. The House ruled that the decree of the Lord Chancellor should be set aside, not because in coming to his decision Lord Cottenham was influenced by his interest in the company, but because of the importance of avoiding the appearance of the judge labouring under the influence of an interest. Lord Campbell said at p. 793:

> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. Since I have had the honour to be Chief Justice of the Court of Queen's Bench, we have again and again set aside proceedings in inferior tribunals because an individual, who had an interest in a cause, took a part in the decision. And it will have a most salutary influence on these tribunals when it is known that this high Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was on that account a decree not according to law, and was set aside. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."

In his judgment in *Reg. v. Gough* [1993] A.C. 646, 659G my noble and learned friend Lord Goff of Chieveley made reference to the great importance of confidence in the integrity of the administration of justice, and he said:

> "In any event, there is an overriding public interest that there should be confidence in the integrity of the administration of justice, which is always associated with the statement of Lord Hewart C.J. in *Rex v. Sussex Justices, Ex*

> *parte McCarthy* [1924] 1 K.B. 256, 259, that it is 'of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.'"

Then at p. 661B, referring to the case of *Dimes*, he said:

> ". . . I wish to draw attention to the fact that there are certain cases in which it has been considered that the circumstances are such that they must inevitably shake public confidence in the integrity of the administration of justice if the decision is to be allowed to stand. Such cases attract the full force of Lord Hewart C.J.'s requirement that justice must not only be done but must manifestly be seen to be done. These cases arise where a person sitting in a judicial capacity has a pecuniary interest in the outcome of the proceedings. In such a case, as Blackburn J. said in *Reg. v. Rand* (1866) L.R. 1 Q.B. 230, 232: 'any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter.' The principle is expressed in the maxim that nobody may be judge in his own cause (nemo judex in sua causa). Perhaps the most famous case in which the principle was applied is *Dimes v. Proprietors of Grand Junction Canal* (1852) 3 H.L.Cas. 759, in which decrees affirmed by Lord Cottenham L.C. in favour of a canal company in which he was a substantial shareholder were set aside by this House, which then proceeded to consider the matter on its merits, and in fact itself affirmed the decrees. Lord Campbell said, at p. 793:
>
> > 'No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred.'
>
> In such a case, therefore, not only is it irrelevant that there was in fact no bias on the part of the tribunal, but there is no question of investigating, from an objective point of view, whether there was any real likelihood of bias, or any reasonable suspicion of bias, on the facts of the particular case. The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand."

Later in his judgment Lord Goff said at p. 664F, agreeing with the view of Lord Woolf at p. 673F, that the only special category of case where there should be disqualification of a judge without the necessity to inquire whether there was any real likelihood of bias was where the judge has a direct pecuniary interest in the outcome of the proceedings. However I am of opinion that there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation. I find persuasive the observations of Lord Widgery C.J. in *Regina v. Altrincham Justices, Ex parte Pennington* [1975] 1 Q.B. 549, 552F:

> "There is no better known rule of natural justice than the one that a man shall not be a judge in his own cause. In its simplest form this means that a man shall not judge an issue in which he has a direct pecuniary interest, but the rule has been extended far beyond such crude examples and now covers cases in which the judge has such an interest in the parties or the matters in dispute as to make it difficult for him to approach the trial with the impartiality and detachment which the judicial function requires.
> "Accordingly, application may be made to set aside a judgment on the so-called ground of bias without showing any direct pecuniary or proprietary interest in the judicial officer concerned."

A similar view was expressed by Deane J. in *Webb v. The Queen* (1994) 181 C.L.R. 41, 74:

> "The area covered by the doctrine of disqualification by reason of the appearance of bias encompasses at least four distinct, though sometimes overlapping, main categories of case. The first is disqualification by interest, that is to say, cases where some direct or indirect interest in the proceedings, *whether pecuniary or otherwise*, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment. . . . The third category is disqualification by association. It will often overlap the first and consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings." (My emphasis)

An illustration of the approach stated by Lord Widgery and Deane J. in respect of a non-pecuniary interest is found in the earlier judgment of Lord Carson in *Frome United Breweries Co. Ltd. v. Bath Justices* [1926] A.C. 586, 618 when he cited with approval the judgments of the Divisional Court in *Reg. v. Fraser* (1893) 9 T.L.R. 613. Lord Carson described *Fraser's* case as one:

> ". . . where a magistrate who was a member of a particular council of a religious body one of the objects of which was to oppose the renewal of licences, was present at a meeting at which it was decided that the council should oppose the transfer or renewal of the licences, and that a solicitor should be instructed to act for the council at the meeting of the magistrates when the case came on. A solicitor was so instructed, and opposed the particular licence, and the magistrate sat on the bench and took part in the decision. The Court in that case came to the conclusion that the magistrate was disqualified on account of bias, and that the decision to refuse the licence was bad. No one imputed mala fides to the magistrate, but Cave J., in giving judgment, said: 'the question was, What would be likely to endanger the respect or diminish the confidence which it was desirable should exist in the administration of justice?' Wright J. stated that although the magistrate had acted from excellent motives and feelings, he still had done so contrary to a well settled principle of law, which affected the character of the administration of justice."

I have already stated that there was no allegation made against Lord Hoffmann that he was actually guilty of bias in coming to his decision, and I wish to make it clear that I am making no finding of actual bias against him. But I consider that the links, described in the judgment of Lord Browne-Wilkinson, between Lord Hoffmann and Amnesty International, which had campaigned strongly against General Pinochet and which intervened in the earlier hearing to support the case that he should be extradited to face trial for his alleged crimes, were so strong that public confidence in the integrity of the administration of justice would be shaken if his decision were allowed to stand. It was this reason and the other reasons given by Lord Browne-Wilkinson which led me to agree reluctantly in the decision of the Appeal Committee on 17 December 1998 that the order of 25 November 1998 should be set aside.