

Appeal no: SC/66/2008
Hearing Dates: 3rd October 2008
Date of Judgment: 22nd October 2008

IN THE SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE LANE
MR E J MITCHELL

**HILAL ABDUL—RAZZAQ ALI
AL JEDDA**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MS H WILLIAMS QC and MR R HERMER (instructed by Public Interest Lawyers)
appeared on behalf of the Appellant.

MR J SWIFT and MR A CONNOR (instructed by the Treasury Solicitor) appeared for the
Secretary of State

PRELIMINARY ISSUE OPEN JUDGMENT

MR JUSTICE MITTING :

Fact and issue

1. The bare facts are set out in paragraphs 1 and 2 of the Judgment of the Commission of 23rd May 2008 and need not be repeated.
2. The issue determined in this Judgment is whether or not the procedural protections afforded by Article 6(1) ECHR as identified by the House of Lords in *Secretary of State for the Home Department v MB* [2007] UKHL 46 2008 1AC 440 apply to the Appellant's appeal against the decision of the Secretary of State to deprive him of his British citizenship. He contends that they do because the appeal will determine his civil rights and obligations, so as to engage Article 6(1). The Secretary of State contends that the rights in question are public law rights, so that their determination does not engage Article 6.

The Law

3. It is common ground that the term "civil rights and obligations" is an autonomous and developing concept. It was originally intended to mean those rights and obligations which in continental European systems of law were adjudicated upon by the Civil Courts: Lord Hoffman in *Begum v Tower Hamlets London Borough Council* [2003] 2AC 430 paragraph 28. Administrative decisions subject to review by Administrative Courts were left for future consideration. It may originally have been understood that for proceedings to be civil both parties should be private persons: this was the view of the majority of the Commission in the seminal case of *Ringeisen v Austria* [1971] 1EHRR 455; but that proposition was decisively rejected by the Court in paragraph 94 of its decision: "Determination of ...civil rights and obligations" covered "all proceedings the result of which is decisive for private rights and obligations". The Court explained why in *Ferrazzini v Italy* [2002] 34EHRR 45, in paragraph 27:

"Relations between the individual and the State have clearly developed in many spheres during the fifty years which have elapsed since the Convention was adopted, with State regulation increasingly intervening in private law relations. This has led the Court to find that procedures classified under National Law as being part of "public law" could come within the purview of Article 6 under its "civil" head if the outcome was decisive for private rights and obligations, in regard to such matters as, to give some examples, the sale of land, the running of a private clinic, property interests, the granting of administrative authorisation relating to the conditions of professional practice or of a licence to serve alcoholic beverages. Moreover, the State's increasing intervention in the individual's day to day life, in terms of welfare protection for example, has required the Court to evaluate features of public law and private law before concluding that the asserted right should be classified as "civil"."

4. Because a civil right can only be conferred by domestic law, it is first necessary to ascertain the nature and extent of the right in issue under the law of the United Kingdom. Citizenship in the United Kingdom is not defined by statute or by case law. The British Nationality Act 1981 states how it can be acquired and renounced, but not what it is. Section 1 of the Immigration Act 1971 read with section 2(1a) provides that a “British citizen” has the right of abode, the right to live in and to come and go from the United Kingdom without let or hindrance, but does not define what a “British citizen” is. In *R v the Secretary of State for the Home Department Ex parte Fayed* 1998 1WLR 763 at 773 e-f, when describing the benefits of which the applicants were deprived by the refusal of citizenship, Lord Woolf M.R. observed:

“The benefits are substantial. Besides the intangible benefit of being a citizen of a country which is their and their family’s home, there are the tangible benefits which include freedom from immigration control, citizenship of the European Union and the rights which accompany that citizenship – the right to vote and the right to stand in Parliamentary elections.”

No other case has been cited to us in which the courts have attempted to identify the nature of the rights conferred by British citizenship. The author of the leading textbook on British Nationality Law, Laurie Fransman Q.C., is right to observe that the “various aspects of citizenship...in the UK are generally dispersed throughout different areas of law like needles in haystacks” (chapter 1.1 page 5).

5. In his report “Citizenship: Our Common Bond” Lord Goldsmith Q.C. identifies four principal rights and obligations of citizenship in Chapter 3:
 - i) The right of abode and freedom of movement
 - ii) Rights of protection
 - iii) Civic rights and responsibilities
 - iv) Rights to benefits and services.

It is common ground that the first three are, in the autonomous concept, public, not civil, rights and obligations. They are, in essence, those identified by Lord Woolf M.R. in *Ex parte Fayed*. As Lord Goldsmith explains in part 4 of chapter 3, rights to benefits and services (for example, social security benefits and health services) are dependent upon a complex combination of factors, principally immigration status and residence, not citizenship. A citizen may well enjoy these rights and services, but he does not do so by virtue of his citizenship. Nor would depriving him of citizenship, without more, disentitle him to receive the benefits and services: for example, a former citizen who remained ordinarily resident in the United Kingdom would be entitled to free National Health Service medical and ancillary services, by reason of continued ordinary residence: section 175 National Health Service Act 2006.

6. Ms Williams QC suggests that there is a fifth category of rights inherent in and dependent upon citizenship which are civil within the autonomous concept, of which prominent examples are the unfettered right to undertake paid employment, the right to enjoyment of property and the right to marry. We accept that these are civil rights, but not that they are a feature of or dependant upon citizenship. They are all rights under law and, so, fall within the scope of Lord Scarman's observation in *R v Home Secretary Ex parte Khawaja* [1984] 1 AC 74 at 111g-h:

“Every person within the jurisdiction enjoys the equal protection of our laws. There is no distinction between British Nationals and others. He who is subject to English law he is entitled to its protection.”

Restrictions on the right to undertake paid employment, to marry without the consent of the Secretary of State and to enjoy property (not to own it, for any individual may lawfully own property in the United Kingdom) are imposed by statute, but only by reference to the immigration status of an individual. The boundary line is not between a British citizen and non-citizen, but between those, including British citizens, who are not subject to immigration control and those who are.

7. We are unpersuaded that the judgement of Warren C J in *Trop v Dulles* 356 US 86 on the effects of the deprivation by the Secretary of State of the citizenship of a US citizen assists in determining the nature of British citizenship and the effects of depriving an individual of it. The rights of a US citizen are defined by the constitution and the laws of the United States, which differ from those of the United Kingdom. The point in issue in the case was whether or not the Secretary of State was entitled to make a deserter stateless, not what, precisely, was inherent in his rights of citizenship. Even if the language of Warren C J can be carried across into the autonomous Strasbourg concept of civil rights, it is suggestive of public, not “civil” rights: loss of citizenship would amount to “the total destruction of the individual's status in organised society”.
7. The Strasbourg Court has consistently made clear that there remain rights enjoyed by citizens and others within Convention States which are not civil, for example: political rights and obligations, disputes between administrative authorities and some (senior) state officials, the expulsion of aliens and tax matters: *Ferazzini* paragraphs 28 and 29. The Court identified these matters as forming “part of the hard core of public authority prerogatives.” Free of authority we would unhesitatingly have held that the rights and obligations comprised in citizenship were, in the autonomous meaning, public not civil rights and obligations. That would be so even though, as we acknowledge, the grant or deprivation of citizenship by the British State may have a substantial impact on the civil rights of an individual.
8. There is an unbroken line of Strasbourg case law to precisely that effect, from *X v Austria* 5212/71 5th October 1972 to *Makuc v Slovenia* 26828/06 heard on 31st May 2007. The case law concerns both acquisition and deprivation of citizenship. In the most recent deprivation case, the Court observed that “Article 6.1 of the Convention does not apply to proceedings regulating a

person's citizenship and/or the entry, stay and deportation of aliens. Such proceedings do not involve either the "determination of his civil rights and obligations or of any criminal charge against him" within the meaning of 6.1 of the Convention" *Naumov v Albania* 10513/03 paragraph 2.. Identical words were used in paragraph 186 of *Makuc*. Ms Williams points out, correctly, that all of the Strasbourg authorities are admissibility decisions and contain little or nothing by way of reasoning to support the conclusion. Nothing in the reports to which we have been referred suggests that the argument which she advances – that citizenship includes a bundle of rights, some of which are civil – has been advanced. Accordingly, she submits that we should not be guided by the decisive rejection of the contention that Article 6.1 applies to citizenship cases (by the Commission and subsequently by the Court). We reject that invitation, both because we are unconvinced that the Court would alter its view in the light of the submissions which she makes and because of the need to keep pace with Strasbourg, but no more, as explained by Lord Bingham in *R(Ullah) v Special Adjudicator* [2004] 2AC 323 paragraph 20 and Lord Brown in *R(Al-Skeini) v Defence Secretary* [2008] 1AC 332 at paragraph 106. Nor do we accept her invitation to distinguish acquisition cases from deprivation cases: both involve the determination of a right. It does not matter that in the former case the right may not yet be enjoyed, whereas in the latter it has been. We do accept her submission that it does not automatically follow that because decisions on the expulsion of aliens do not involve the determination of civil rights (see *Maaouia v France* 33EHRR 42), a decision to deprive an individual of citizenship cannot involve the determination of civil rights. The two issues require to be distinctly addressed and we do not found our decision on the proposition which she impugns; but an observation of the Court in paragraph 38 of *Maaouia* is in point:

“The fact that the exclusion order incidentally had major repercussions on the Applicant's private and family life or on his prospects of employment cannot suffice to bring those proceedings within the scope of civil rights protected by Article 6(1) of the Convention.”

Put at its highest from the Appellant's point of view, that is the position here: deprivation of his British citizenship may well incidentally have major repercussions on his private and family life and on his prospects of employment within the United Kingdom. Nevertheless, they do not alter the quality of the decision under appeal.

Conclusion

9. For the reasons given, we are satisfied that the Appellant's appeal against the order depriving him of his citizenship is not subject to the procedural protection afforded by Article 6(1) of the Convention and is to be determined only in accordance with the Special Immigration Appeals Commission (Procedure) Rules 2003.