1 December 2009

PRESS SUMMARY

R (on the application of Barclay and others) v Secretary of State for Justice and others [2009] UKSC 9
On appeal from the Court of Appeal Civil Division [2008] EWCA Civ 1319

JUSTICES: Lord Hope (Deputy President), Lord Scott, Lord Brown, Lord Neuberger, Lord Collins

BACKGROUND TO THE APPEAL

Sark is an island in the Channel Islands of about 600 inhabitants. In this appeal, Sir David and Sir Frederick Barclay sought to challenge new constitutional arrangements in Sark contained in the Reform (Sark) Law 2008.

Under the Reform Law, the electorate (of about 500 people) vote for 28 members of Sark's legislature, which is called the "Chief Pleas". But there are two members of the Chief Pleas who are not elected.

The first is the "Seigneur" (or Lord) of Sark, who holds a title first granted by Queen Elizabeth I in the sixteenth century. Although he may speak, the Seigneur cannot vote at any meeting of the Chief Pleas, but he does have a power temporarily to veto Ordinances of the Chief Pleas. The second is the "Seneschal" (or Steward), whose office was created by the Crown in the seventeenth century. The Seneschal convenes meetings of and presides over the Chief Pleas, but has no power to speak in debates or to vote. Historically, both the Seigneur and the Seneschal were able to vote in the Chief Pleas.

The Barclay brothers argued that the position of the Seigneur and the Seneschal, under the new arrangements, was incompatible with Article 3 of the First Protocol to the European Convention on Human Rights, which protects "the free expression of the opinion of the people in the choice of the legislature". They argued that the effect of that Article is that all members of a single chamber legislature must be elected members.

An appeal was also brought by Dr Tomas Slivnik, who wanted to stand for election to the Chief Pleas. He argued that the Reform Law discriminated against him contrary to the European Convention. He said that this was because, even though he had a right to *vote* as a resident, he nevertheless did not have a right to *stand for election* as he was a citizen of Slovenia.

JUDGMENT

The Supreme Court held that the unelected position of the Seigneur and the Seneschal was not incompatible with Article 3 of the First Protocol to the European Convention on Human Rights. It held also that the restriction on Dr Slivnik's standing for election complied with his Convention rights. The appeals were unanimously dismissed.

REASONS FOR THE JUDGMENT

The leading judgment was given by Lord Collins, with whom the other Justices (Lords Hope, Scott, Brown and Neuberger) agreed.

[References in square brackets are to paragraph numbers in the judgment].

As to whether the position of the Seneschal and the Seigneur in the Chief Pleas of Sark, as provided for in the Reform Law, was a breach of Article 3 of the First Protocol to the European Convention on Human Rights:

- There was no invariable rule in Article 3 of the First Protocol that all members of a legislature had to be elected irrespective of their powers and irrespective of the circumstances [67], [70].

- Until 1922 the composition of the Chief Pleas reflected the feudal system in Sark and between 1922 and 2008 the feudal Tenants dominated the Chief Pleas. Against that background, and in light generally of the constitutional history and the political factors relevant to Sark, the position of the Seigneur and the Seneschal was well within the margin of appreciation given to Contracting States to the Convention under Article 3 of the First Protocol. The free expression of the opinion of the people of Sark was not impeded by their membership of the Chief Pleas [71]-[72], [74].

- The Seigneur's power temporarily to veto legislation was proportionate and consistent with Article 3 of the First Protocol. In reaching that conclusion, it was legitimate to take account of the fact that the power had not been used in modern times, and that the Seigneur had indicated it would only be used in very limited circumstances [78].

- The Seneschal's powers were those which any presiding officer would be given or would need. His position could not realistically be said to impair the essence of the rights under Article 3 of the First Protocol [83].

As to whether the prohibition imposed by the Reform Law on persons who are "aliens" from standing for election to the Chief Pleas of Sark is a breach of the right under Article 3 of the First Protocol, read alone and / or in conjunction with Article 14 of the Convention:

- Under the European Convention, as reflected in the decisions of the Strasbourg Court and in the practice of the members of the Council of Europe, it is citizens, and not non-resident aliens, who have the right to vote and stand for election. There may be some exceptions, but the general rule is clear [93].

- Article 3 of the First Protocol does not require a justification for qualifications which are stricter for standing for election than for voting. Historical and political factors have determined the definition of "alien" in UK law. Eligibility for standing for election in Sark was limited to those with a genuine connection with Sark in the form of residence or ownership of property. It was clear that in the light of those factors and the breadth of the margin of appreciation, the exclusion of aliens from eligibility to stand for election was justifiable [95].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.

The full judgment is available on the Supreme Court website from 10:00 am today at: - http://www.supremecourt.gov.uk/news/judgments.html