



16 October 2013

PRESS SUMMARY

R (on the application of Chester) (Appellant) v Secretary of State for Justice (Respondent)
McGeoch (AP) (Appellant) v The Lord President of the Council and another (Respondents)
[2013] UKSC 63
On appeal from [2010] EWCA Civ 1439 and [2011] CSIH 67

JUSTICES: Lady Hale (Deputy President), Lord Hope, Lord Mance, Lord Kerr, Lord Clarke, Lord Sumption and Lord Hughes

BACKGROUND TO THE APPEALS

The appellants in these two appeals are prisoners serving sentences of life imprisonment imposed for murder, combined in the case of McGeoch with a later sentence of seven and a half years for violent escape from lawful custody. Both the appellants claim that their rights have been and are being infringed because they are not entitled to vote.

United Kingdom law currently contains a general prohibition on voting by prisoners. In a series of cases (*Hirst (No 2) v UK*, *Greens v UK* and *Scoppola v Italy*) the European Court of Human Rights (“**ECtHR**”) has held that a blanket prohibition of this nature is an indiscriminate restriction on a vitally important right and, as such, incompatible with Article 3 of Protocol No 1 (“**A3P1**”, the duty to hold free and fair elections) of the European Convention on Human Rights (the “**Convention**”) [18-22].

The appellant Peter Chester issued a claim for judicial review in December 2008 in relation to UK and European Parliamentary elections. He relies on A3P1, as incorporated into domestic law by the Human Rights Act (the “**HRA**”), and also on European Community or now Union law (“**EU law**”). The appellant George McGeoch’s claim for judicial review was issued in February 2011 in relation to local and Scottish Parliamentary elections. He relies solely on EU law [1-3].

Both claims were dismissed by the courts below. The High Court and Court of Appeal held in Chester’s case that it was not their role to sanction the Government for the delay in implementing the decision in *Hirst (No 2)* or to advise as to how the Government might implement a voting system that would be compatible with A3P1, and that EU law raised no separate issue. The Inner House dismissed McGeoch’s claim on the ground that EU law only conferred a right to vote in municipal (i.e. local) elections on EU citizens residing in a Member State of which they were not nationals. The Supreme Court permitted McGeoch to add a complaint that his rights in relation to EU Parliamentary elections were also being infringed [2-3].

The issues before the Supreme Court are: (a) whether it should apply the principles established in *Hirst (No 2)*; (b) whether, if such principles are applied, the current ban on voting is incompatible with Chester’s rights under A3P1, and Supreme Court should make a further declaration of incompatibility under the HRA; (c) whether EU law recognises an individual right to vote, in terms paralleling or greater than that arising under A3P1, on which the appellants can rely upon as EU citizens claiming to vote in their own countries; and (d) what consequences would follow if EU law were to recognise an individual right to vote of this nature and, in particular, what if any relief would be available to Chester and McGeoch.

JUDGMENT

The Supreme Court unanimously dismisses both appeals. Lord Mance gives the lead judgment. Lady Hale, Lord Clarke and Lord Sumption give additional judgments.

With regard to claims under the Convention, the Supreme Court applies the principles in *Hirst (No 2)* and *Scoppola* regarding the blanket ban on voting, but declines to make any further declaration of incompatibility in respect of Chester [39-42]. With regard to EU law, this does not provide an individual right to vote paralleling

that recognised by the ECtHR in its case-law. The resolution of these appeals does not require a reference to the Court of Justice of the European Union (“CJEU”) [46-47, 58, 59, 63-64 and 68].

REASONS FOR THE JUDGMENT

Claims under the Human Rights Act

Under the HRA, the Supreme Court is required to “take into account” decisions of the ECtHR, not necessarily to follow them. This enables the national courts to engage in a constructive dialogue with the ECtHR. However, the prohibition on prisoner voting in the UK has now been considered by the Grand Chamber of the ECtHR twice and, on each occasion, found to be incompatible with A3P1. In these circumstances, it would have to involve some truly fundamental principle of law or the most egregious oversight or misunderstanding before it could be appropriate for the Supreme Court to refuse to follow Grand Chamber decisions of the ECtHR. The ban on prisoner voting is not a fundamental principle of law in the UK, and the circumstances do not justify a departure from the ECtHR’s caselaw [25-35].

Accepting that, on the reasoning in *Hirst (No 2)*, Chester was a victim for the purposes of the HRA and the Convention and entitled as such to bring a claim against the respondents, that does not necessarily entitle him to any particular remedy under the HRA. A declaration of incompatibility is a discretionary remedy. The incompatibility of the prohibition on prisoner voting in the UK with the Convention is already the subject of a declaration of incompatibility made in *Smith v Scott* and is currently under review by Parliament. In these circumstances there is no point in making a further declaration of incompatibility. This is particularly so in the case of Chester. Given that he is serving a sentence of life imprisonment, ECtHR caselaw indicates that he would not himself have a right to benefit from any amendments to the law on prisoner voting necessary to remedy the present incompatibility of UK law with the Convention [36-42]. That is so although his tariff period has expired and he remains in detention because his detention continues to be necessary for the protection of the public.

Claims under EU law

The provisions on voting contained in the applicable European Treaties focus on the core concerns of ensuring equal treatment between EU citizens residing in Member States other than that of their nationality, and so safeguarding freedom of movement within the EU. Eligibility to vote in Member States is basically a matter for national legislatures [58-59]. The CJEU has scrutinised national eligibility criteria for conformity with the EU legal principle of non-discrimination in a context where Netherlands law extended the right to vote of its nationals to nationals resident in some, but not all, non-EU States. But there is no equivalent link with EU law in the present cases [60-64].

Additional EU analysis

For completeness, the Supreme Court has considered the consequences if, contrary to their conclusions, EU law were to be regarded as conferring an individual right to vote on which McGeoch and Chester could rely. On that hypothesis, it considers that:

- The EU legal principle of non-discrimination would still not be engaged. Convicted prisoners serving their sentence are not in a comparable position to persons not in prison [65-68]
- In any event, the general ban on prisoner voting could not have been disapplied as a whole, and the relevant domestic legislation could not have been interpreted compatibly with EU law. Nor could the Supreme Court itself have devised a scheme compatible with EU law; that would be for Parliament. Therefore, the only relief that might have been appropriate would have been a declaration that the legislative provisions governing eligibility to vote in European Parliamentary and municipal elections in the UK were inconsistent with EU law, although even that would not have appeared appropriate in the instant cases [72-74].
- Neither of the appellants could have had any arguable claim for damages in respect of any breach of EU law [82-83].

References in square brackets are to paragraphs in the judgment

NOTE

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

Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html