



12 May 2016

PRESS SUMMARY

Ministry of Defence (Respondent) v Iraqi Civilians (Appellant) [2016] UKSC 25 *On appeal from [2015] EWCA Civ 1241*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Sumption, Lord Reed

BACKGROUND TO THE APPEAL

The appellants are 14 lead claimants in claims by over 600 Iraqi citizens who claim to have suffered unlawful detention and/or physical maltreatment at the hands of British armed forces in Iraq between 2003 and 2009. The claims are brought in tort in England against the Ministry of Defence. The torts are governed by Iraqi law. The Foreign Limitation Periods Act 1984 provides that where a claim is brought in England which is governed by a foreign law, the English courts are to apply the foreign law of limitation. In a substantial number of these cases the action was begun more than three years after the relevant claimant became aware of the injury and the person who caused it, and was therefore time-barred under article 232 of the Iraqi Civil Code.

The appellants argued that time had been suspended for limitation purposes under article 435(1) of the Civil Code, which suspends the time limit during any period when there is “[an] *impediment rendering it impossible for the plaintiff to claim his right*”. They said that Coalition Provisional Authority Order 17 (“CPA Order 17”), which gave coalition forces immunity from Iraqi legal process and jurisdiction and still has force of law in Iraq, was such an “*impediment*”.

The first instance judge directed the hearing of a preliminary issue, namely whether the suspensory proviso in article 435(1) applied to the claimants’ proceedings in England. He held that the limitation period was suspended under article 435(1). The Court of Appeal allowed the Ministry of Defence’s appeal, holding that article 435(1) was not engaged, because the English courts are not bound to apply CPA Order 17, which is a mere procedural bar that is irrelevant to proceedings in England.

JUDGMENT

The Supreme Court unanimously dismisses the appeal by the Iraqi civilians, and affirms the Court of Appeal’s conclusion that the limitation period was not suspended under article 435(1) of the Iraqi Civil Code. Lord Sumption gives the only judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

The Foreign Limitation Periods Act 1984 requires an English court to apply to English proceedings a foreign law of limitation which will have been designed for proceedings in the foreign country. This requires a process of transposition. Facts that the foreign law would have treated as relevant to the foreign proceedings might be irrelevant to the proceedings in England [13].

Where the Iraqi law of limitation depends on some fact about the proceedings, the English court must ask whether that fact is applicable to proceedings brought in England, and not to hypothetical proceedings that might have been brought in Iraq [15]. CPA Order 17 applies only in Iraq. It is not an

impediment to the only relevant proceedings, which are in England. It does not therefore suspend the running of the Iraqi law limitation period [16].

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:

<http://supremecourt.uk/decided-cases/index.html>