

Court decides English law alone to apply to determine limitation in historical Cyprus torture claims

12/01/2018 (Public Law)

The Queen's Bench Division has today issued judgment for the Claimants on the first preliminary issue in *Sophocleous & Others v Secretary of State for the Foreign and Commonwealth Office and Secretary of State for Defence*. The 34 claimants complain of assaults, beatings, rape and other acts of violence allegedly inflicted from 1956 to 1958 in Cyprus during the "Cyprus Emergency" by agents of the United Kingdom government and of the then Colonial Administration of Cyprus. The defendants are the successors to the Secretaries of State for the Colonial Office and the War Office. The claimants contend that the defendants are (i) vicariously liable for the acts of violence alleged (ii) liable as joint tortfeasors with the Colonial Administration and (iii) liable for negligence, i.e. breach of a duty of care by allowing the acts of violence to take place or failing to prevent them.

The preliminary issue before the Court was, assuming the Claimants' pleaded case to be correct, "as a matter of private international law, which law (or laws) applies (or apply) for determining limitation?". As the alleged tortious acts occurred in the 1950s, they fall outside the temporal scope of the Private International Law (Miscellaneous Provisions) Act 1995, and the Rome II Regulation. The Defendants contended that the common law rule of double actionability applies to the claims, as the torts alleged were in substance committed in Cyprus and not in England. In consequence, the Defendants contended that it is the law of Cyprus as well as England which applies for determining the question of limitation (the effective period being the shorter of the two). The Claimants contended that, on their pleaded case, they were subjected to acts of torture in furtherance of a system devised and put in motion by the Defendants in London, and that the substance of the torts were therefore committed there. Alternatively, the Claimants contended that the so-called "flexible exception" to the double actionability rule formulated by Lord Wilberforce in *Boys v. Chaplin* [1971] AC 356 ought to be employed, such that English law alone ought to govern the issue.

Mr Justice Kerr today issued judgment for the Claimants on the preliminary issue. While accepting the Defendants' contentions in relation to where the substance of each of the alleged torts were committed, he went on to hold that the flexible exception ought to be applied, reasoning that the court should not, whether as a matter of justice, comity or public policy, allow the British government to claim exemption from liability in tort under English law by reference to the law of Cyprus.

Permission to appeal to the Court of Appeal was granted.

The Judgment appears [here](#).

Malcolm Birdling appeared for the Claimants and Martin Chamberlain QC appeared for the Defendants. Marie Demetriou QC acted for the Claimants at an earlier stage in proceedings.

RELATED BARRISTERS

- Marie Demetriou QC
- Martin Chamberlain QC
- Malcolm Birdling