

Supreme Court considers important test of Vienna Convention in relation to Wikileaks documents

12/02/2018 (*Public Law*)

The Supreme Court has decided in *Bancoult (No 3)*, by 5-2, that a government decision about the Chagos Islands was not made for an improper purpose. In reaching this decision, the Court unanimously held that a Wikileaks document could be admitted into evidence.

The case concerned the decision of the then Secretary of State for Foreign and Commonwealth Affairs, David Miliband, to impose a Maritime Protection Area (MPA) around the Chagos Islands. A Wikileaks document was published, which purported to be a cable from the US Embassy in London summarising a meeting between US and British officials. The Appellants argued that the contents of this cable indicated that the decision about the MPA was undertaken for the improper purpose of preventing the Islanders return to the Chagos Islands.

The main issue concerned whether the Wikileaks document could be used in evidence. This depended on the interpretation of the Vienna Convention on Diplomatic Relations 1969, which provides that a document and archive of a diplomatic mission is “inviolable”. The Court held that this inviolability meant that it was impermissible for a domestic court to use them in evidence, other than in exceptional circumstances. In this instance, the Court held that the Wikileaks document was not part of the US Embassy’s archive or in its control, and it was in the public domain and widely disseminated, so that either no inviolability could attach to it or any inviolability it might have had was lost.

The test for reversing the decision at first instance was whether the admission into evidence of the Wikileaks document, when weighed against other evidence, *could* have made a difference to the court’s decision. On the facts, that test was not satisfied, and the appeal was dismissed.

The Judgment is [here](#).

Robert McCorquodale appeared for the appellant Bancoult at the Supreme Court and the Court of Appeal, stages, and conducted the advocacy on the Wikileaks argument before both Courts. He was instructed by Clifford Chance LLP.

Maya Lester QC and Daniel Piccinin appeared in the Divisional Court and Court of Appeal on issues of EU law.

BRICK COURT CHAMBERS

BARRISTERS

RELATED BARRISTERS

- Maya Lester QC
- Daniel Piccinin
- Professor Robert McCorquodale