

MEDIA SUMMARY

The Queen (on the application of Solange Hoareau and Louis Olivier Bancoult) v The Secretary of State for Foreign and Commonwealth Affairs

NOTE: This summary is designed to assist in reporting the Court’s judgment. It makes reference to the judgment, a copy of which is available at www.judiciary.uk, but it is not a substitute for the judgment which provides a full record of the Court’s reasons.

- 1 The Court of Appeal (Sir Terence Etherton, Master of the Rolls, Lord Justice Green and Lord Justice Dingemans) has today (Thursday 30 July 2020) given judgment dismissing the appeal brought by Solange Hoareau and Louis Olivier Bancoult against the judgment of the Divisional Court (Lord Justice Singh and Mrs Justice Carr) dated 8 February 2019.
- 2 Ms Hoareau and Mr Bancoult had brought a claim against the Secretary of State for Foreign and Commonwealth Affairs. Ms Hoareau and Mr Bancoult were seeking to quash the decision of the Government of the United Kingdom dated 16 November 2016 (announced by Baroness Anelay) not to resettle the Chagossian people in the British Indian Ocean Territory, which is also referred to as the Chagos Islands, but to provide a package of financial support of £40 million over a period of ten years. (The text of the Government’s decision is set out at paragraph 70 of the judgment).
- 3 The circumstances in which the Chagossians were removed in the late 1960’s and early 1970’s from the Chagos Islands are addressed from paragraphs 4 to 17 of the judgment. It was common ground that the removal was wrong, and the Government stated that it looked back with deep regret, as appears from paragraph 4 of the judgment.
- 4 The wrongful removal of the Chagossians has been the subject of litigation against the Government since 1975. A summary of the past litigation is set out from paragraphs 18 to 45 of the judgment. This includes claims for damages made by Chagossians which were compromised (paragraphs 18 and 19), past claims made in the European Court of Human Rights (paragraph 35), a claim made by Mauritius pursuant to the United National Convention on the Law of the

Sea (paragraphs 34 and 38) and the delivery of an Advisory Opinion from the International Court of Justice (paragraphs 42 and 43). The Court noted some matters which appeared from the review of the past litigation in paragraph 45.

5 The Government's review of its policy about resettlement on the Chagos Islands was announced on 20 December 2012 and a summary of the steps taken in that review is set out from paragraphs 46 to 70 of the judgment.

6 The current proceedings and the judgment of the Divisional Court are summarised in paragraphs 71 to 88 of the judgment.

7 The legal issues raised by the appeal are identified in paragraph 92 of the judgment. In summary there were three issues: (1) whether the European Convention on Human Rights and Fundamental Freedoms ("ECHR"), given domestic effect by the Human Rights Act 1998, extended to the Chagos Islands and whether there had been an interference with Ms Hoareau's and Mr Bancoult's rights; (2) whether the Divisional Court had applied the right level of scrutiny to the Government's decision making; and (3) whether the Government's decision was irrational because it was said that the issues were approached in the wrong order and there had been material misdescriptions about the feasibility of construction of a runway and about the financial package.

8 Those legal issues were addressed in turn. As to the first issue the Court sets out its reasons from paragraphs 93 to 145 for finding that the ECHR did not extend to the Chagos Islands. The judgment of the European Court of Human Rights is analysed from paragraphs 105 to 106 and the Advisory Opinion of the International Court of Justice is analysed from paragraphs 109 to 126.

9 As to the second issue the Court sets out its reasons from paragraphs 146 to 161 for finding that the legal test to be applied by the Court was not one of anxious scrutiny. The Court also explains that the adoption of a text of anxious scrutiny would have made no difference to the result in paragraphs 153 and 154 of the judgment.

10 As to the third issue the Court sets out its reasons from paragraphs 162 to 183 for rejecting the specific challenges to the rationality of the decision made by the Government.