

Judicial Communications Office

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COURT DISMISSES CHALLENGE IN RESPECT OF THE BRITISH NATIONALITY ACT 1981

Summary of Judgment

The Court of Appeal¹ today dismissed a challenge by a person of both British and Irish citizenship asserting a right to be recognised as an Irish citizen only. The court decided that this asserted right is not protected by the Human Rights Act.

Background

The effect of the British Nationality Act 1981 (“the 1981 Act”) is that every person born in the territory of the United Kingdom following the commencement of that statute on 1 January 1983 becomes a British citizen provided that upon birth their father or mother is a British citizen or is settled in the United Kingdom or in a qualifying territory. Caoimhe Ni Chuinneagain (“the appellant”) is a British citizen by virtue of this statute, having been born in the United Kingdom, specifically Northern Ireland. She objected to this on cultural and related grounds. While she is also an Irish citizen and while she has available to her a legal mechanism for renouncing her British citizenship, her aim was to secure a legal status which would recognise her as an Irish citizen only via this appeal. The public authority against whom she chose to proceed is the Secretary of State for the Home Department (the “Home Secretary”), being the Minister of the Crown with responsibility for citizenship and immigration matters. Her application for leave to apply for judicial review was dismissed by Mr Justice Scofield at first instance. It is this decision which she challenged.

Relief

The sole relief sought by the appellant was a declaration that section 1(1) and section 12 of the 1981 Act are incompatible with her rights under Article 8 ECHR in contravention of the Human Rights Act 1998.

The appellant’s case also however had a second element - that s1(1) of the 1981 Act is incompatible with the Belfast Agreement.

Facts

The appellant was born in Belfast and lives here. She is an Irish citizen and has an Irish passport, on which she has previously travelled abroad on a number of occasions. Her parents are also Irish citizens and she has a number of relatives who live in the Republic of Ireland, as well as in the border area. She attends an Irish-medium school. She has

¹ The panel was comprised of Lord Justice McCloskey, Lord Justice Horner and Mr Justice Colton. Lord Justice McCloskey delivered the judgment of the Court.

described in her affidavit evidence that she has a keen interest in Gaelic and Irish culture, and believes that she is “fully immersed in all aspects of Irish national culture.” Irish is her first language and she is a player of traditional Irish music.

The appellant also averred that she has never presented herself as a British citizen in any context or for any reason and says that she would not do so. She objected to the notion of ‘British citizen or subject’ being applied to her. Although the appellant accepted that it is open to her (particularly now that she has attained the age of 18) to renounce her British citizenship, she has averred that she does not wish to do so as she considers that doing so would represent an acceptance that she was born a British citizen, in addition to having to pay the administrative cost involved.

Grounds

The appellant argued:

- (i) Article 8 ECHR conferred upon her a right to respect for her status as an Irish citizen only.
- (ii) By the automatic conferral of British citizenship on her at birth, section 1(1) of the 1981 Act has interfered with her right to respect for private life since and continues to do so, in a disproportionate way, contrary to Article 8.
- (iii) Section 12 of the 1981 Act interfered with her right to respect for private life, contrary to Article 8, by requiring her [a] to recognise and accept the status of British nationality to which she objects and [b] to pay a fee of £371 to renounce her British citizenship.

The Human Rights Act: Article 8

The court rejected the appellant’s case under the Human Rights Act (specifically Article 8(1) ECHR). It decided that the right asserted by the appellant is not protected by this provision.

Article 8 ECHR and the Belfast and British-Irish Agreements

The court also considered that there was nothing in the text of the relevant provisions of the two international agreements to warrant the assessment that section 1(1) and section 12 of the 1981 Act, either individually or together, is/ are in conflict with their provisions. The court stated that section 12 of the 1981 Act provides a mechanism for the exercise of choice by the individual. It enables the appellant and likeminded persons to be “... **accepted as Irish ...**” **only**. Furthermore, neither section 1(1) nor section 12, individually or in combination, infringes the right of the appellant and likeminded persons to “... **identify themselves ... as Irish**” **only**. The court considered it is incontestable that the appellant is free to exercise this right. Neither the administrative requirement to tick a box specifying that she seeks to renounce her British nationality nor the statutory requirement to pay an administration fee of £371 infringes her Article 8 rights.

Conclusions

The court concluded:

- (i) The right asserted by the appellant, namely a right to respect for her status as an Irish citizen only, is not protected by Article 8 ECHR.
- (ii) In the alternative to (i), section 1(1) of the British Nationality Act 1981 does not interfere with this right.
- (iii) In the alternative to (i) and (ii), any interference with the appellant's enjoyment of this right pursues a legitimate aim, is in accordance with the law and is proportionate.
- (iv) Section 1(1) of the British Nationality Act, whether on its own or in conjunction with section 12, is harmonious with the rights enshrined in section 1(i) of the Belfast Agreement and Article 1(vi) of the British-Irish Agreement.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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