



14 February 2018

PRESS SUMMARY

R (on the application of Mott) (Respondent) v Environment Agency (Appellant)
[2018] UKSC 10
On appeal from [2016] EWCA Civ 564

JUSTICES: Lady Hale (President), Lord Kerr, Lord Carnwath, Lady Black, Lord Briggs

BACKGROUND TO THE APPEAL

The Respondent, Mr Mott, has a leasehold interest in a “putcher rank” fishery on the banks of the Severn Estuary. A putcher rank is an old fishing technique, involving the use of conical baskets to trap adult salmon as they attempt to return from the open sea to their river of origin to spawn. According to Mr Mott’s evidence, the operation of the putcher rank has been his full-time occupation since 1979. The Appellant, the Environment Agency (“the Agency”), has a long-standing policy of reducing exploitation of salmon stocks in the area. For some years, the status of salmon stock in the Wye and Usk rivers, to which mixed salmon stock in the Severn Estuary are destined to return, has been categorised as “unfavourable” or “at risk.” These rivers are designated as Special Areas of Conservation (“SAC”) under European law and are part of the wider Severn Estuary European Marine Site.

To operate the putcher rank during salmon season, Mr Mott has needed an annual licence from the Agency under section 25 of the Salmon Freshwater Fisheries Act 1975 (“the 1975 Act”). With effect from 1 January 2011, the 1975 Act was amended to enable the Agency to grant a licence subject to conditions which limit the number of fish taken as the Agency considered “necessary ... for the protection of any fishery.” On 1 June 2012, after negotiations between the parties for termination of the lease and permanent cessation of the putcher rank fishery failed, the Agency served notice on Mr Mott under the amended 1975 Act limiting his catch to 30 fish for the 2012 season. Further limits of 23 salmon and 24 salmon were imposed in 2013 and 2014, respectively. Whilst Mr Mott was paid compensation on various occasions between 2004 and 2011 not to operate the fishery during particular seasons, no compensation was paid to him in relation to the restrictions imposed between 2012 and 2014.

Mr Mott began judicial review proceedings against the Agency’s decision to impose conditions. He claimed that the catch limit conditions made his fishery wholly uneconomic to operate. He also claimed that the decisions were irrational and in breach of his property rights under Article 1 of Protocol 1 (“A1P1”) of the European Convention on Human Rights (“ECHR”). The judge held that the decisions were irrational and that, under A1P1, the Agency could not properly have imposed the conditions, if otherwise lawful, without payment of compensation. The Court of Appeal allowed the Agency’s appeal on the issue of irrationality, but dismissed the appeal under A1P1. Only the A1P1 issue arises on appeal to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the Agency’s appeal. Lord Carnwath gives the lead judgment with which the other justices agree.

REASONS FOR THE JUDGMENT

The application of A1P1, in circumstances comparable in some respects to the present, was considered by the Court of Appeal in *R (Trailer and Marina (Leven) Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2005] 1 WLR 1267 [19]. In *Trailer and Marina*, Neuberger LJ referred to the decision of the Grand Chamber of the European Court of Human Rights (“ECtHR”) in *Sporrong & Lönnroth v Sweden* (1982) 5 EHRR 85 for the proposition that, irrespective of whether an interference with property rights can be classified as a deprivation or a control of use under A1P1, it may be necessary to consider whether a fair balance was struck between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights [20]. An authoritative summary of the principles is found in the Grand Chamber ECtHR decision of *Hutten-Czapska v Poland* (2007) 45 EHRR 4 which held that in each case involving an alleged violation of A1P1 the court must ascertain whether by reason of the state’s interference the person concerned had to bear a disproportionate and excessive burden [22].

The issues arising in this appeal were: (i) whether the conditions imposed by the Agency amounted to control or *de facto* expropriation under A1P1, (ii) if the former, did the “fair balance” require compensation to be paid, and (iii) if the latter, were there any exceptional circumstances justifying the absence of compensation [27].

The Agency submitted that the restrictions in question were clearly a control of use of Mr Mott’s property. As to whether a fair balance had been struck, the Agency referred to its important responsibilities with respect to protection of the environment, a factor emphasised in the ECtHR case law [28-30]. Mr Mott submitted that the effect of the conditions was to nullify the practical use of his lease, and thus amounted to expropriation. Even if the conditions were regarded as a control of use, the courts below were entitled to find that they required Mr Mott to shoulder an excessive and disproportionate burden, such that breach of A1P1 could only be prevented by payment of compensation [31].

The Court found that that the distinction between expropriation and control under ECtHR case law is neither clear-cut nor crucial to the present analysis. It is necessary to consider whether the effect on the particular claimant was excessive and disproportionate [32]. The Agency was correct to emphasise the special importance of environmental protection but this does not detract from the need to draw a fair balance, nor from the potential relevance of compensation [33].

Against the background of the ECtHR case law, the Court was unable to fault the judge’s analysis of the applicable legal principles in this case [34-36]. The fact that the conditions imposed by the Agency were closer to deprivation than mere control was clearly relevant to the fair balance. The Agency gave no consideration to the particular impact on Mr Mott’s livelihood, which was severe. The judge suggested that the lease retained “some small value” if sold for leisure rather than commercial use but this was doubtful and did not consider restrictions on Mr Mott’s ability to transfer his interest in the lease [36].

In upholding the decision of the courts below, the Court emphasised that this was an exceptional case on the facts, because of the severity and the disproportion (as compared to others) of the impact on Mr Mott. The national authorities have a wide margin of discretion in the imposition of necessary environmental controls, and A1P1 gives no general expectation of compensation for adverse effects. Furthermore, where (unlike this case) the authorities have given proper consideration to the issues of fair balance, the courts should give weight to their assessment [37].

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>