EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Chagos islanders' case inadmissible because they accepted compensation and waived the right to bring any further claims before the UK national courts

In its decision in the case of Chagos Islanders v. the United Kingdom (application no. 35622/04) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned the expulsion of the Chagos islanders from their homes – on the Chagos Islands, a group of islands in the middle of the Indian Ocean which are an Overseas Territory of the United Kingdom – from 1967 to 1973 in order to set up an American military base.

The Court notably found that the heart of the applicants' claims under the European Convention on Human Rights was the callous and shameful treatment which they or their antecedents had suffered during their removal from the Chagos islands. These claims had, however, been raised in the domestic courts and settled, definitively. In accepting and receiving compensation, the applicants had effectively renounced bringing any further claims to determine whether the expulsion and exclusion from their homes had been unlawful and breached their rights and they therefore could no longer claim to be victims of a violation of the Convention. It was not for the Court, in that event, to undertake the role of a first-instance tribunal of fact and law.

Principal facts

The applicants are 1,786 natives, or descendants of natives, of the Chagos Islands, sometimes referred to as "Ilois" or "Chagossians" who are essentially of African, Malagasy and Indian origin. The Chagos Islands, in the middle of the Indian Ocean, comprise three main island groups (Diego Garcia being the largest) and 65 other outer islands. They have been under British rule since the 19th century, becoming a new colony in November 1965 known as the British Indian Ocean Territory (BIOT) made up of the Chagos Islands and other islands formerly part of the Colony of Mauritius[1] and the Seychelles. The islands' economy was essentially based on coconut (copra) plantations.

In December 1966, the United Kingdom and United States Governments agreed that the BIOT islands could be used for American defence purposes for an indefinite period, subject to review in 2016. The islands were thus evacuated between 1967 and 1973, some islanders being prevented from returning after visits elsewhere and others being transferred either to Mauritius or the Seychelles. No force was used but the islanders were told that the company which owned the coconut plantations where they worked was closing down and that, unless they accepted transportation elsewhere, they would be left without supplies. The islanders suffered miserable conditions on being uprooted, having lost their homes and livelihoods.

Three immigration ordinances were enacted, prohibiting the islanders' return. The first in April 1971 made it unlawful, and a criminal offence, for anyone to enter or remain in the BIOT islands without a permit. The second in 2000 mainly repeated the provisions of the 1971 ordinance but contained a new section lifting the bar – except entry to Diego

[1] Mauritius became independent in 1968.

Garcia which remained subject to permit – as concerned British Dependent Territories Citizens (that is, the Chagos islanders) by virtue of their connection with BIOT. This ordinance was then repealed in 2004, and anyone without a permit from the immigration officer was prohibited from entering the territory. During the four years when the bar was lifted as concerned the islanders, a few of them made visits to the outer islands to tend family graves and or see former homes, but none actually went to live in the islands.

A number of proceedings were brought by the islanders concerning the expulsion and the damage that this inflicted on their lives. The first set were brought in 1975 (the *Ventacassen* case) which were settled in 1982 on payment of 4 million pounds by the United Kingdom and provision of land worth one million pounds. In settling, the islanders agreed to give up their claims. In the later *Chagos Islanders* case (involving 4,466 claimants), the High Court struck out the action in October 2003, finding that an attempt to claim further compensation and make further claims arising out of the expulsion and exclusion from the islands was an abuse since the claims had been renounced by the islanders. The most recent proceedings (*Bancoult 2* case) involved an unsuccessful challenge by the applicants by way of judicial review of legislative measures imposing immigration control on the islands which barred entry without leave. In rejecting the claim, the House of Lords held that in the context of the present day, rather than 1968, any right of abode on the outer islands was purely symbolic, none of the islanders having gone to live on the islands in the four year period when this had been permitted under the ordinance then in force.

Complaints, procedure and composition of the Court

The applicants complained about their removal from the islands (the decision-making process behind it as well as the manner in which it was carried out), the reception conditions on their arrival in Mauritius and the Seychelles, the prohibition on their return, the refusal to facilitate return once the prohibition had been lifted and the refusal to compensate them. They relied on Articles 3 (prohibition on inhuman and degrading treatment), 6 (right to a fair trial / right of access to court), 8 (right to respect for private life, family and home), 13 (right to an effective remedy) and Article 1 of Protocol No. 1 (protection of property).

The application was lodged with the European Court of Human Rights on 20 September 2004.

Human Rights Watch and Minority Rights Group International were authorised to intervene in the written procedure as third parties (under Article 36 §§ 1 and 2 of the Convention).

The decision was given by a Chamber of seven, composed as follows:

David Thór **Björgvinsson** (Iceland), *Judge*,
Lech **Garlicki** (Poland),
Nicolas **Bratza** (the United Kingdom),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro)*, Judges*,

and also Lawrence **Early**, *Section Registrar.*

Decision of the Court

The Court reiterated that where applicants accept a sum of compensation in settlement of civil claims and renounce further use of local remedies, they will generally no longer be able to claim to be a victim in respect of those matters. Having accepted and received compensation in the *Ventacassen* litigation and thus having effectively renounced on bringing any further claims, the applicants could therefore no longer claim to be victims of a violation of the Convention. The islanders could have pursued their claims and obtained the domestic courts' findings as to whether the expulsion and exclusion from their homes had been unlawful and breached their rights. They chose, however, to settle their claims without obtaining such a determination. It was not for the Court, in that event, to undertake the role of a first-instance tribunal of fact and law.

The argument that not all the applicants had signed the waiver forms in the settlement or had not realised that the settlement was final was rejected. In the *Chagos Islanders'* case the High Court judge had rejected those arguments after having heard extensive evidence and, in any case, the islanders had been represented by lawyers in the litigation which settled. Furthermore, any other islanders – not part of the 471 islanders involved in the settlement – had to have been aware of the proceedings, which were widely known, and could have made claims and thus taken advantage of the settlement offer put forward or, if they preferred, pursued their claims in the domestic court proceedings. Those islanders have, for their part, failed to exhaust domestic remedies as required by Article 35 § 1 (admissibility criteria[2]) of the Convention.

As concerned the applicants who were not born at the time of the settlement, the Court noted that they had never had a home on the islands and could therefore have no claim to victim status arising out of the expulsions and their immediate aftermath.

Indeed, it was apparent from all the judgments given that, whatever the outcome of those proceedings, the applicants continued to have no legal, or practical, prospect of being able to enter or settle on the islands. The national courts had decided that there was no further legal recourse open to them or legal obligation on the Government to pay additional compensation or fund resettlement. Nor was the Government or any other source willing to provide such funding.

Therefore, the heart of the applicants' claims under the Convention was the callous and shameful treatment which they or their antecedents had suffered during their original removal from the islands from 1967 to 1973, and these claims had been raised in the domestic courts and settled, definitively. The Court found, like the House of Lords, that the applicants' attempts to pursue matters further in more recent years had to be regarded as part of an overall campaign to bring pressure to bear on Government policy rather than disclosing any new situation giving rise to fresh claims under the Convention.

Nor did the Court find any indication of arbitrariness or unfairness in the proceedings before the national courts which could be construed as a denial of access to court.

The Chagos Islanders' application was therefore rejected under Article 35 §§ 1, 3 and 4[2] of the Convention and declared inadmissible.

[2] Applications must meet certain requirements if they are to be declared admissible by the Court; otherwise the complaints will not be examined. Cases can only be brought to the Court after domestic remedies have been exhausted; in other words, individuals complaining of violations of their rights must first have taken their case through the courts of the country concerned, up to the highest possible level of jurisdiction. The applicant must be, personally and directly, a victim of a violation of the Convention, and must have suffered a significant disadvantage. An applicant's allegations must concern one or more of the rights protected by the Convention. Applications must also be lodged with the Court within six months following the last judicial decision in the case, which will usually be a judgment by the highest court in the country concerned. See Guide on Admissibility Criteria.

The decision is available only in English.

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