

International: Mohamed v Breish & Ors [2020] EWCA Civ 637

Dominic Bright

What are the aspects, scope, and effect of the “one voice” principle (“the principle”)?

That is, where the government has recognised the existence of a foreign state (or the government of a foreign state), the court is bound to treat the state as a sovereign state (and the government as the government of a sovereign state) in the determination of disputes before it.

Aspects

Popplewell LJ – with whom Males and King LJ agreed – set out the three *aspects*.

First, the principle “is engaged by recognition of foreign governments as de facto governments, and that such recognition says nothing about the de jure status or constitutional lawfulness of the government under local law.”

Secondly: “The basis for the principle is rooted in the constitutional allocation of the roles of the executive and the judiciary in this country. It is the consequence of the constitutional separation of powers which dictates that it is the sole prerogative of the executive to determine what foreign states and governments to recognise.”

Thirdly, “the Court must not express a contrary view for any purpose, which would include such contrary view as an essential step of its reasoning. To do so would undermine the very fabric of the doctrine.”

Scope & effect

Males LJ succinctly summarised the *scope and effect* as follows (with emphasis added):

- “(1) When a question arises in an English court as to the *existence* or *identity* of a foreign government, that question must be determined in accordance with *English* law.
- (2) Despite the 1980 change of policy (whereby in general [Her Majesty’s Government “HMG”] no longer recognises governments as distinct from states), it is open to HMG to certify to the court that it recognises (or does not recognise) a particular body as the government of a foreign state.
- (3) When HMG recognises a body as the government of a foreign state, that body *is* so far as the English court is concerned *the* government of that foreign state for *all* purposes, so that the court is not entitled to reach a contrary conclusion; to do so would infringe the one voice principle, which is a fundamental principle of our constitutional law.
- (4) Thus acts done by a *recognised* foreign government cannot be challenged on the ground that the body in question is not a *valid* or *lawful* government under the law of the state concerned; that does not, however, preclude a challenge on other grounds which do not involve asserting that the body in question is not the government.
- (5) The one voice principle is *separate* and *distinct* from other doctrines such as act of state, sovereign immunity, judicial review and Crown act of state.”