



28 November 2012

## PRESS SUMMARY

**Ruddy (Appellant) v Chief Constable, Strathclyde Police and another (Respondents)**  
**(Scotland) [2012] UKSC 57**  
*On appeal from [2011] CSIH 16*

**JUSTICES:** Lord Hope (Deputy President), Lady Hale, Lord Mance, Lord Kerr, and Lord Reed.

### BACKGROUND TO THE APPEAL

On 6 September 2004 the Appellant, having been arrested the day before and taken to Perth police station, was driven by car to a police station in Glasgow by two officers of Strathclyde Police. He alleges that he was abused, threatened with violence and assaulted by the Strathclyde police officers before, during and after that journey. He applied for legal aid in order to take proceedings against the Chief Constable of Strathclyde Police (the “Chief Constable”). Strathclyde Police treated the intimation of the legal aid application in November 2004 as a complaint and remitted the matter to its Complaints and Discipline Branch (the “Complaints Branch”). The Complaints Branch reported receipt of the complaint to the Procurator Fiscal for Glasgow.

In January 2005, the Procurator Fiscal instructed the Complaints Branch to carry out an investigation into the complaint. An officer of the Complaints Branch carried out the investigation and submitted his report to the Procurator Fiscal in March 2005. The Procurator Fiscal took a statement from the Appellant and considered the Complaints Branch report and a medical report submitted by the Appellant. On 6 June 2005, the Procurator Fiscal informed the Appellant that she was satisfied that the available evidence did not justify criminal proceedings against any police officer. The Complaints Branch then reviewed the complaint and informed the Appellant on 22 June 2005 that Strathclyde Police did not consider it necessary to take any proceedings for misconduct against the police officers.

The Appellant raised an action in Glasgow Sheriff Court in August 2005. The first claim in the action was in relation to the alleged assault and was made against the Chief Constable. The Appellant sought damages at common law and under section 8(3) of the Human Rights Act 1998 for a breach of the substantive obligation under article 3 of the Convention (which prohibits torture and inhuman or degrading treatment or punishment). The second claim was in relation to an alleged failure to carry out an effective investigation into the Appellant’s complaint, in breach of the procedural obligation under article 3 of the Convention. The Appellant sought damages under section 8(3) of the Human Rights Act 1998 and section 100(3) of the Scotland Act 1998 against the Chief Constable and the Lord Advocate jointly and severally for this breach.

The Chief Constable and the Lord Advocate argued that the Appellant’s second claim was irrelevant. After a debate, the Sheriff agreed. The Appellant’s appeal to the Sheriff Principal was unsuccessful. The Appellant then appealed to the Inner House of the Court of Session. At the start of the first day of a three day appeal hearing, the Court informed counsel that it seemed to it that there were fundamental questions about the competency of the action. The suggestion was that the second claim was distinct and separate and raised questions of administrative law that would require to be made the subject of judicial review in the Court of Session. Proceedings were adjourned until 2.00 pm that afternoon to allow counsel to consider this issue. Having heard argument on the point, it discharged the remainder of the hearing and took time to consider its judgment [1 – 5].

The Court then issued an opinion which dealt with the point raised at the appeal hearing and set out its reasons for holding on another ground, before hearing the parties on the point, that the action as a whole was incompetent. The parties were given an opportunity to make submissions at a procedural hearing, but no submissions were made. The Court then dismissed the action. The Appellant appealed to the Supreme Court. The issues in the appeal were: (1) whether it was competent for the Appellant to bring his two article 3 claims, or either of them, by way of action; and (2) whether it was competent for the Appellant to raise the first claim against the Chief Constable and the second claim against the Chief Constable and the Lord Advocate together in the same action [6, 7 – 10 and 12].

## **JUDGMENT**

The Supreme Court unanimously allows the appeal. The Appellant's action is competent. The case will be returned to the Inner House for a hearing of the appeal against the decision of the Sheriff Principal. The judgment is given by Lord Hope with whom all the other Justices agree.

## **REASONS FOR THE JUDGMENT**

As the Court of Session is to a large extent the master of its own procedure, the Supreme Court will always be reluctant to interfere with the judgment of the Inner House on a question of competency unless the judgment is wrong in principle. Regrettably, however, that test is satisfied in this case [13].

The objections to the competency of the two article 3 claims are unsound in principle. The Appellant is not seeking an exercise of the supervisory jurisdiction of the Court of Session in order to have decisions of the Chief Constable or the Lord Advocate reviewed or set aside. His case in relation to both article 3 claims is based on allegations of acts or omissions. He is not seeking, and does not need, to have them corrected in order to provide a foundation for his claims. He seeks just satisfaction for the fact that, as he argues, his Convention rights have been breached. The claims are in essence simply those of damages. Judicial review for their determination would be inept [15 and 18 – 21].

The well-established principle that one pursuer cannot sue two or more defenders for separate causes of action and conclude for a lump sum against them jointly and severally has not been breached in this case. It is clear that the wrongs which are the subject of the Appellant's claims are separate and were committed at different times by different people. But the Appellant is not asking for a decree for the Respondents to be found liable in a single lump sum. The objection to the competency of the action on this basis is misconceived [22 and 24 – 25].

It is possible to imagine cases where an objection to competency could be taken on the ground that the pleadings defeat the ends of avoiding undue complexity and keeping good order in litigation. The guiding principle when such an objection is taken is whether the way the action is framed is likely to lead to manifest inconvenience and injustice. There is no absolute rule one way or the other, so long as the rule which says that it is incompetent for a pursuer to ask for a decree in a lump sum for separate wrongs is not broken. In this case the Appellant's two claims, although separate, are interconnected in law and in fact, and it would be in the interests of justice and more convenient for them not to be separated. The pleadings are not unduly complex and good order in litigation favours the two claims being heard together. The objection to the competency of the action on this basis is also misconceived [27 – 28 and 32 – 33].

*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.**

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