

GIBRALTAR

A prosecution, with possible political overtones, was undertaken against the Chief Justice of Gibraltar for a minor traffic violation.

Gibraltar was captured by Britain during the War of the Spanish Succession in 1704 and its sovereignty was ceded to Britain by Spain under the Terms of the Treaty of Utrecht in 1713. In 1830 Gibraltar was declared a Crown Colony and civil rights were bestowed on its inhabitants. In 1921 a City Council was established to handle matters of a municipal nature. Due to local demands for more self-government, Gibraltar's first Legislative Council was established in 1950 and in 1969 a new Constitution, the Gibraltar Constitution Order 1969, was adopted and remains in force to this day.

Spain has never accepted the loss of Gibraltar and has made several unsuccessful attempts to recapture the territory. In a 1967 referendum, the population of Gibraltar overwhelmingly voted for continued association with Great Britain. Gibraltar entered the European Economic Community in 1973 as a dependant territory in Europe at the same time as Britain.

The Chief of State is Queen Elizabeth II, who appoints a Governor and Commander-in-Chief to represent her in Gibraltar. David Durie has held this post since 5 April 2000. The head of Government is the Chief Minister, who is appointed by the Governor as the elected member of the Assembly most likely to command the support of the majority of the elected members of the Assembly. Peter Caruana, the leader of the Gibraltar Social Democrats, has been Chief Minister since 17 May 1996. The cabinet of Gibraltar is the Council of Ministers, which consists of the Chief Minister and a number of additional Ministers, who are appointed from among the 15 elected members of the House of Assembly by the Governor in consultation with the Chief Minister. There is also a Gibraltar Council that advises the Governor.

The legislative branch of Gibraltar consists of the Governor and the Assembly. The unicameral House of Assembly is composed of 18 seats. One of these is appointed for the Speaker by the Governor after consultation with the Chief Minister and the Leader of the Opposition, 15 are elected by popular vote and two seats are taken by the Attorney-General and the Financial and Development Secretary, who are ex-officio members of the Assembly. They serve a four-year term. The last elections were held on 10 February 2000. The Gibraltar Social Democrats won for the second time in succession, with 54 per cent, followed by the Gibraltar Socialist Alliance with 40 per cent.

Chapter I of the Constitution of Gibraltar contains provisions which guarantee the protection of fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights. Among those legally enforceable provisions are the right to life; the right to personal liberty; protection from inhuman treatment; protection of freedom of movement; protection of privacy of the home and other property; protection of freedom of expression, including freedom of the press; protection of freedom of assembly and association; and ensuring protection of the law, which includes the right to a fair trial, and all related safeguards, in both criminal and civil matters.

THE JUDICIARY

The judicial system of Gibraltar is based on the English system, with some minor modifications. Gibraltar has a Magistrates Court, a Supreme Court, with criminal and civil jurisdiction, and a Court of Appeal.

The Magistrates' Court is presided by a Stipendiary Magistrate or, in his absence, by lay Magistrates. Criminal cases in the Supreme Court are tried by jury, while civil cases are typically tried by judges alone. The Supreme Court consists of two judges. One of those Judges is the Chief Justice, who is the head of the Judiciary. The Chief Justice has the responsibility for the administration of justice and of all courts in Gibraltar. The legally qualified Registrar of the Supreme Court also holds the office of Admiralty Marshal and is in charge of the admiralty jurisdiction of the Supreme Court. The Court of Appeal is not resident in Gibraltar, but holds three sessions each year. It consists of a President and two Justices of Appeal. The Chief Justice is an ex-officio member of the Court of Appeal for all purposes except for appeals from his own decision. The Justices of Appeal are mainly drawn from the English Court of Appeal.

The Attorney General combines the functions of the Attorney General and the Director of Public Prosecution. He is the legal adviser to the Crown and an ex-officio member of the House of Assembly. The Attorney General's Chambers have a number of Crown Counsels.

Appointment and Dismissal

According to Article 58 (1) of the Gibraltar Constitution Order 1969, the Chief Justice, the President of the Court of Appeal and the Justices of Appeal are appointed by the Governor pursuant to instructions given by Her Majesty through a Secretary of State.

Article 58. (2) Gibraltar Constitution Order 1969 specifies the requirements for qualification to be appointed Chief Justice, President of the Court of Appeal or Justice of Appeal. The appointee must have been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court; or must be entitled to practise as an advocate in such a court and must have had this entitlement for not less than ten years.

Article 60. (2) of the Gibraltar Constitution Order 1969 enumerates the possible grounds for the removal from office of the Chief Justice, the President of the Court of Appeal, and a Justice of Appeal. They may be removed by the Governor for inability to discharge the functions of their office, arising from infirmity of body, mind or any other cause, or for misbehaviour. If the Governor intends to do so, he must appoint a tribunal to inquire into the matter and advise him whether he should proceed. In such cases the Governor must request the Crown to refer the question of the removal of the judge to the Judicial Committee of her Majesty's Privy Council, under section 4 of the Judicial Committee Act 1833. The Judicial Committee then advises the Crown to remove the judge for inability or misbehaviour. In such cases the Governor would remove the judge after having after requested permission for removal from the Crown and advice in support of removal had been received from the Judicial Committee of the Privy Council.

Security of Tenure

According to Article 60. (1) of the Gibraltar Constitution Order 1969, the office of the Chief Justice must in principal be vacated by the holder when he attains the age of 67 years. However, subsections (a) and (b) allow for the Governor to prolong the duration of the office under certain circumstances, at a maximum until the holder reaches the age of 72 years.

CASES

Derek Schofield {Chief Justice of Gibraltar}:

In October 1999, at the opening of the Legal Year, the Chief Justice, Derek Schofield, expressed concern that the Government of Gibraltar had held back funding for the judiciary in a manner that potentially might adversely affect the administration of justice. After a public exchange with the Executive, played out in the media, the Chief Justice commented that governmental control over judicial appointments and funding could affect the administration of justice. The Governor replied that the Chief Justice had gone beyond his judicial duty with these remarks. By the end of November 1999 the public dispute had receded.

In March 2000 the Chief Justice's housekeeper reported to the Government that she was being paid below minimum wage. The Chief Justice acknowledged that he had failed to regularise the social security and tax benefits of his employee, but also stated that this mistake was not an uncommon one. The matter was presented to the Governor in May 2000 to determine whether an independent tribunal would be necessary to examine the case. In October 2000 the Governor announced that the housekeeper's employment was properly registered and that at this point all outstanding payments had been met. Furthermore, the Governor stated that it was not apparent that the Chief Justice deliberately attempted to avoid his obligations, and formal action was not necessary.

On 28 July 2000 the Chief Justice was stopped by a police officer and notified that he did not have a valid MOT vehicle registration. The matter was resolved and there was no indication that the incident would be pursued any further. However, on 16 August two police officers visited the home of the Chief Justice and stated that an offence had been committed. The Chief Justice notified the police officers that he had previously filed for registration, but the application was delayed because of the registry's administrative backlog. In addition, the Chief Justice noted that at the time of the offence, fines were not imposed because there was a grace period due to a new system.

On 24 August 2000 the Chief Justice received a written caution for "No Valid MOT" and "No Valid Road Tax". The Attorney General issued a letter to the Chief Justice's counsel inquiring whether he was prepared to accept the caution. Mr. Schofield's counsel answered that the letter merely informed the Chief Justice that the Commissioner of the Police had taken a lenient view of the offences and that no further action would be taken, hence the question of accepting or rejecting the caution did not arise. Upon request the Commissioner of the Police sent a detailed description of the alleged offences. He stated that there is sufficient evidence to prosecute for the offence, but that, because a 28 July 2000 press release had specified that motorists would be prosecuted beginning on 1 August 2000, no further action would be taken. The letter further acknowledged that the Chief Justice clearly committed an offence. The Commissioner of the Police stated that he was prepared to issue a formal caution with respect to the MOT certificate that was out of date by over six months, unless the Chief Justice acknowledged that he had transgressed the law. A further exchange of the positions led to a letter by the Commissioner of the Police that stated that because the Chief Justice did not accept his guilt in relation to the MOT traffic offence, he was left with no alternative but to resolve the matter by other means.

The International Commission of Jurists (ICJ) observed the proceedings of the trial of the Chief Justice on the minor motor vehicles charge between 26 and 28 July 2001. The Chief Justice applied to the court for a stay of prosecution arguing that his prosecution would constitute an abuse of prosecution, since the letter issued on behalf of the Commissioner of Police on 17 August 2000 had

indicated that the Chief Justice was simply being cautioned, not prosecuted, for the alleged offence. At trial, the Stipendiary Magistrate ruled against the Chief Justice's application.

The trial was conducted fairly and in accordance with international standards. The ICJ was concerned, however, that the Court suggested in its ruling that the Chief Justice had proposed that his Office should bring "a degree of advantage" based solely on the basis of his position. Contrary to the court's construction of the Chief justice's submission, the ICJ had observed that, consistent with the principle that all citizens are equal before the law, neither prosecution nor defence counsel asserted that the office of the defendant (i.e. Chief Justice) was material to proceedings.

The final dispensation of the case remained unresolved at the time of this writing.