

UK Supreme Court Declares Prorogue Unlawful

In a landmark decision, the Supreme Court has unanimously ruled that Prime Minister Boris Johnson's decision to suspend (i.e. prorogue) Parliament was unlawful. Therefore, in the affirmative words of Lady Hale, President of the Supreme Court, "Parliament has not been prorogued." This means that Parliament can return as if it has always been sitting, as if the prorogation had not occurred at all.

This case is a big victory for anti-Brexit campaigner Gina Miller, who was supported in her legal battle by Sir John Major, as well as for 70 Parliamentarians, who brought separate legal challenges arguing that the prorogation was unlawful.

Background

Mr Johnson rose to his current position as Prime Minister following the resignation of Theresa May. He has been a vocal campaigner for the United Kingdom to leave the European Union (i.e. Brexit) and many believe his decision to prorogue Parliament for five weeks from 9 September was made to frustrate any debates relating to Brexit in order to avoid scrutiny of his plans to implement Brexit, with or without a deal, on 31 October.

Two lower courts had already ruled on the advice to prorogue given by the Prime Minister to Her Majesty the Queen on 27 and 28 August 2019. The Inner House of the Court of Session in Scotland had ruled that the British Prime Minister's decision to advise the Queen to prorogue was unlawful and was motivated by "the improper purpose of stymying Parliamentary scrutiny of the Government." Meanwhile, the High Court of England and Wales in London found that it was not proper for the Court to review such a decision on the basis that it was political.

The Supreme Court therefore considered the aforementioned decisions of the two lower courts. Because of the importance of this case, a panel of 11 Justices (i.e. the maximum number of serving Justices who are permitted to sit) was convened.

Related Capabilities

- International Arbitration & Litigation
- Europe
- Appellate

Decision

Lady Hale explained that now is a time of exceptional circumstances, given Brexit's potential imminence. With a profound constitutional change due to occur, it was the view of Lady Hale that "Parliament, and in particular the House of Commons as the elected representatives of the people, has a right to a voice in how that change comes about." Mr Johnson's argument that Parliament should be prorogued in order for him to outline his government's new policies was not accepted; Lady Hale stated that Mr Johnson had stymied Parliament's ability to carry out its constitutional functions without reasonable justification.

It was held that the government had undermined Parliamentary sovereignty. Lady Hale explained "Parliamentary sovereignty - that Parliament can make laws which everyone must obey: this would be undermined if the executive could, through the use of the prerogative, prevent Parliament from exercising its power to make laws for as long as it pleased" and that the government must be accountable to Parliament.

Not only is the Supreme Court's ruling significant in relation to the continued debate on and eventual outcome of Brexit, it also sets a precedent for courts to make a ruling on what may otherwise be viewed as a purely political decision by the government. Lady Hale declared "there is no doubt that the courts have jurisdiction to decide upon the existence and limits of a prerogative power."

What now?

In her speech, Lady Hale said that the Court does not believe any additional steps need to be taken by the Prime Minister before the next meeting of each House. It is instead for the Speakers of the Commons and the Lords to decide on what follows. John Bercow, Speaker of the Commons, said that arrangements have been made for the House of Commons authorities to prepare for the return of Parliament on Wednesday, from 11:30 BST. Boris Johnson is due to return to London just before the resumption of proceedings, cutting short his three day visit to New York.

Sir John Major remarked that Boris Johnson owed Parliament an "unreserved apology." Furthermore, many critics of the Prime Minister, including Labour party leader Jeremy Corbyn, have called for his resignation.

Should Mr Johnson resign, he would become the shortest serving Prime Minister in British history. However, Downing Street aides have denied that Boris Johnson intends to resign. Mr Johnson has commented that he "strongly disagrees" with the decision that has shaken Britain, but will nevertheless uphold it though noted that the court ruling does not prevent Mr Johnson from proroguing again so long as there is "reasonable justification".