

September 24, 2019

UK SUPREME COURT DECIDES SUSPENDING UK PARLIAMENT WAS UNLAWFUL

To Our Clients and Friends:

1. The UK's highest court has today ruled ([here](#)) that Prime Minister Boris Johnson's decision to suspend (or "prorogue") Parliament for five weeks, from September 9, 2019 until October 14, 2019, was unlawful. The Supreme Court, sitting with eleven justices instead of the usual five, unanimously found "*that the decision to advise Her Majesty to prorogue Parliament was unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification*". It is a well-established constitutional convention that the Queen is obliged to follow the Prime Minister's advice.
2. The landmark Supreme Court ruling dealt with two appeals, one from businesswoman Gina Miller and the other from the UK Government. Mrs Miller was appealing a decision of the English Divisional Court that the prorogation was "*purely political*" and not a matter for the courts. The UK Government was appealing a ruling of Scotland's Court of Session that the suspension was "*unlawful*" and had been used to "*stymie*" Parliament. A link to the full judgment is [here](#).
3. A key question before the Court, therefore, was whether the lawfulness of the Prime Minister's advice to Her Majesty was "justiciable", i.e. whether the court had a right to review that decision or whether it was purely a political matter. The Court held that the advice was justiciable: "*The courts have exercised a supervisory jurisdiction over the lawfulness of acts of the Government for centuries*".
4. The next question was on the constitutional limits of the power to prorogue. The Court decided that prorogation would be unlawful if it had the effect of "*frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive*". The Court stated that it was not concerned with the Prime Minister's motive; the key concern was whether there was good reason for the Prime Minister to prorogue as he did.
5. The subsequent question related to the effect of the prorogation. The Supreme Court held that the decision to prorogue Parliament prevented Parliament from carrying out its constitutional role of holding the government to account and that, in the "*quite exceptional*" surrounding circumstances, it is "*especially important that he [the Prime Minister] be ready to face the House of Commons.*" The Court held that it was "*impossible for us to conclude, on the evidence which has been put before us, that there was any reason – let alone a good reason – to advise Her Majesty to prorogue Parliament for five weeks*".

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6. The final question was on the legal effect of that finding and what remedies the Court should grant. The Court declared that as the advice was unlawful, the prorogation was unlawful, null and of no effect; Parliament had not been prorogued.
7. The Supreme Court's judgment further explained that "*as Parliament is not prorogued, it is for Parliament to decide what to do next.*" Almost immediately after judgment was handed down, it was announced that both the House of Commons and House of Lords will resume sitting tomorrow, Wednesday September 25, 2019. Prime Minister's Questions – usually scheduled for each Wednesday that Parliament is in session – will not take place due to notice requirements.
8. The UK Government has pledged to "*respect*" the judgment and the Prime Minister plans to return to the UK from New York, where he is due to address the U.N. General Assembly.
9. Shortly before Parliament was prorogued, a new law was passed requiring the Prime Minister to seek an extension to the current October 31 deadline for the UK to leave the EU unless Parliament agreed otherwise (European Union (Withdrawal) (No. 2) Act 2019). The Government has asserted that this legislation is defective and continues to insist that the UK will leave the EU on October 31, 2019. The Supreme Court's judgment does not directly affect the position in respect of the October 31 deadline.



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