

Piers Gardner

MA(Oxon)

Call date: 2000

Telephone: 020 7405 7211

Fax: 020 7405 2084

Email: pgardner@monckton.com



Summary

Piers transferred to the Bar in 2000, after over 20 years experience as a solicitor, in the City, at the European Commission Human Rights and as Director of the British Institute of International & Comparative Law.

He has developed a detailed knowledge of all aspects of the European Convention on Human Rights, together with other European treaty based law, and its operation in domestic and international law. He has dealt in particular with cases concerning the application of the ECHR to commercial, investigatory and tax matters and the interaction of international and domestic proceedings, often in several jurisdictions at once.

This unusual transnational practice has involved cases concerning 18 European countries apart from the UK, plus Australia, the Bahamas, Channel Islands, Gibraltar, Isle of Man, Hong Kong, the Turks and Caicos and the USA.

Key features have been the protection of confidentiality, particularly in commercial and tax matters, extradition, evidence gathering and mutual assistance.

Major Cases

- R (application of Hafner) v City of Westminster Magistrates Court [2008] EWHC 524 Admin, first interpretation of the extent of Article 8 rights of an intervener to privacy
- Georgia v Russia (EurCtHR 13255/07): fourth inter State case ever lodged before the European Court of Human Rights and the first before the permanent court.
- Miller v UK (Miller v Miller [2006] UKHL 24): concerns the monetary award to a spouse in a very high value divorce and the adequacy of the reasoning of the High Court, Court of Appeal and House of Lords
- Craxi v Italy (No 25337/94, 17 July 2003): telephone surveillance; public access to trial records; privacy of public figures' conversations
- Yukos Oil Company v Russia: (No 14902/04): corporate tax and expropriation (Art 1 FP)

Key public cases: R (Department of Trade and Industry) v Kansal 29 November 2001, (HL), [2001]UKHL 62.

Intervention (written and oral) for Lyons, Ronson and Parnes: retrospective effect: sections 3(1), 6, 7(6) and 22(4) Human Rights Act 1998

- R v I J Lyons (CA) and R v Criminal Cases Review Commission, ex parte the Director of the Serious Fraud Office (public law) [2001] EWCA Crim 1828 Right to silence, compulsorily acquired evidence; finding of a violation of the right to a fair trial by the European Court; consequences
- IJL, GMR and AKP v the United Kingdom [Eur Ct HR judgment of 19 September 2000 33 EHRR 11] Guinness trial. Self incrimination; ss 434 ff Companies Act; DTI Inspectors; right to silence; fair trial (Art 6)
- Craxi v Italy [25337/94, Eur Ct HR 14/10/96 and 7/12/2000, HuridocRef 0005991]: Telephone surveillance; public access to trial records; privacy of public figures' conversations (Arts 6 and 8)
- Creative Direct Marketing and others v Belgium [Eur Ct HR No 25337/94, 17 July 2003] Direct marketing activities for child relief charities; commercial free speech, information for educational and fund raising purposes; restrictions (Arts 6, 8, 10,11 and 1 of Protocol 1)

Specialist Areas

Commercial and Regulatory

Piers has been involved in advising in respect of commercial and regulatory issues including:

- The establishment of jurisdiction in Texas under Chapter 11 US Bankruptcy Code proceedings over a Russian

oil company: In Re Yukos Oil Company, US Bankruptcy Court for the Southern District of Texas (2005)

- The powers and duties of the Economic Secretary to the Treasury to initiate proceedings under section 61 of the Financial Services Act 1986
- The proper exercise of the powers of a Special Manager and Receiver under section 177 Insolvency Act 1986 and the proper limits on the provision of mutual assistance under section 426 Insolvency Act 1986
- The scope of disclosure of joint, personal and matrimonial assets to a Trustee in Bankruptcy and the procedure for achieving "respect for private and family life" under Article 8 of the Convention
- The compliance of proceedings under the Company Directors Disqualification Act with the Human Rights Act both as to disclosure and fairness
- The powers of intervention of the Office of the Supervision of Solicitors and the Law Society in a solicitors' practice including the special issues arising with regard to registered foreign lawyers
- The conflicting interests of mortgages and mortgagors in possession proceedings
- Direct marketing activities for child relief charities; commercial free speech and the provision of information for educational and fund raising purposes

European Law

Piers has considerable experience of advisory and contentious work relating to European law, in the domestic law of the United Kingdom and other European jurisdictions.

This work has included litigation concerning:

- The jurisdiction of the national courts of Germany to review the fairness of decisions of the European Patent Office which they were required to enforce
- The jurisdiction of the Office for Harmonisation in the Internal Market to challenge its own decision in respect of a European Patent application before the CFI (Case T-186/04, Spa Monopole)
- The fairness of the EU State aid investigation and enforcement regime

He also advises on a number of matters, particularly relating to the freedoms under the Treaty, including:

- Company Directors Disqualification proceedings; provision of services by the company and its directors to companies established elsewhere in the EU: Official Receiver v Stern and another Ch [1999]
- Restrictions on freedom of movement and the provision of services arising from extradition and criminal investigations and proceedings in cases before:

- The Divisional Court and House of Lords: R v Secretary of State for the Home Department, ex p Laufer DC [1997], HL [1998].

the French cour de cassation,

- The court of appeal of Milan and the Italian Constitutional Court and
- The Oberlandesgericht Frankfurt am Main

- The regime and rights of establishment of holiday reps in connection with the provision of holiday services to customers on winter sports holidays.

He has also advised on jurisdictional issues in several high profile matrimonial cases under the Brussels II regime.

Human Rights and Public Law

Piers has specialised in the interpretation and application of the European Convention on Human Rights for more than 25 years.

As a result he has extensive experience of advisory and contentious work relating to its operation in Strasbourg as well as in the national legal systems of many European countries, including the Human Rights Act (HRA) in the UK. Two particular areas of his experience are the conduct of contemporaneous international and domestic proceedings, including especially interim measures and suspensive relief, and the interaction of the European Convention on Human Rights with other European and bilateral treaties (such as mutual assistance in administrative, regulatory, fiscal and criminal matters).

This has involved considerable work in relation to investigatory and regulatory powers in the commercial field in England and in the domestic law of other European countries, including litigation before the highest courts in Austria, Belgium, Federal Republic of Germany, Italy, Liechtenstein, Luxembourg, the Russian Federation, Spain and Switzerland as well as before the English courts at all levels.

In addition Piers has acted in a significant number of cases involving the interaction of ECHR and EU law, as well as in proceedings involving the International Covenant on Civil and Political Rights, both in domestic law and before the UN Human Rights Committee in Geneva. He has also advised, as an expert for the Council of Europe, on the reception of the ECHR in the domestic law of Bosnia Herzegovina, Georgia and the Russian Federation.

Key cases

HRA cases

- R (application of Hafner) v City of Westminster Magistrates Court [2008] EWHC 524 Admin, first interpretation of the extent of Article 8 rights of an intervener to privacy
- R v Kansal (intervention) [2001] UKHL 62, [2002] 2 AC 69, temporal scope of HRA
- R v Lyons and others [2001] EWCA Crim 2860, consequences under English law of a finding of an unfair trial by the Eur Ct HR.

Commonwealth

- a Gibraltar Company, R v Financial Services Commissioner (2003) 14BHRC 499, and the Court of Appeal for Gibraltar (19 September 2003): conformity of financial services regime with Constitutionally protected confidentiality

Eur Ct HR cases

- Georgia v Russia (EurCtHR 13255/07): fourth inter State case ever lodged before the European Court of Human Rights and the first before the permanent court.
- Soering v the United Kingdom (EHRR 11:439): extradition to the USA to face death row refused; first extra-territorial application of the ECHR by the European Court; first interim measures imposed against the UK
- IJL, GMR & AKP v UK, (EHRR 33:11): compulsorily acquired testimony in company investigation; right to silence (Art 6)
- Krenz and others v Federal Republic of Germany (EHRR 33:22): former Head of Government of German Democratic Republic and other senior politicians and one border guard convicted after German re-unification of manslaughter in respect of the shooting of refugees crossing the Berlin wall; State succession; retrospective criminal penalties (Art 7)
- Craxi v Italy (No 25337/94, 17 July 2003): telephone surveillance; public access to trial records; privacy of public figures' conversations
- Yukos Oil Company v Russia: (No 14902/04): corporate tax and expropriation (Art 1 FP)

UNHRC

- Weiss v Austria (Eur Ct HR 74511/01 and UNHRC 1086/2002) extradition, interim measures under R 39 Eur Ct HR and Rule 86 UNHRC; Governmental breach of administrative court injunction; binding character of UNHRC interim measures

Additional Information

Publications

Contributed to published works on international, European and Human Rights law

Foreign Languages

French and German

What the directories say

Chambers UK, 2010 states that "Piers Gardner of Monckton Chambers has lengthy, invaluable experience in Strasbourg and displays enormous technical prowess. He is regularly instructed in high-profile and politically sensitive matters."

Legal 500, 2009 lists Piers Gardner as a Leading Junior on Civil Liberties and Human Rights.

For Civil Liberties, **Chambers UK, 2009** rates Piers as "'terrific technically." His experience of working in Strasbourg equips him with knowledge of the ECHR that few can rival, which proves highly effective when combined with his "forceful advocacy

Piers is recommended for Human Rights in **Chambers UK, 2007** and **2008**: "...Prior to transferring to the Bar in 2000, Piers Gardner of Monckton Chambers worked as a solicitor at the European Commission of Human Rights and the British Institute of International & Comparative Law for over 20 years. He has a multi-jurisdictional practice, handling cases concerning Australia, the Bahamas, France, Germany, the Isle of Man, the Netherlands, Russia, Spain, Switzerland, the USA and the UK in the past year. His major highlight was acting in YUKOS's USD27 billion dispute with the Russian government over the lawfulness of tax claims and the expropriation of YUKOS's subsidiary YNG."

The editions of **The Legal 500** in **2005, 2006, 2007** and **2008** all recommend Piers Gardner as a Leading Junior on Civil Liberties and Human Rights. The 2005 edition mentions: "Monckton Chambers' Piers Gardner, a former solicitor at the ECHR, has over 20 years' dedicated experience of dealing with human rights issues in Strasbourg. One client insists he is 'the person to go to' for difficult Convention cases and that his arguments always have a 'practical, commercial effect'."