



PUBLIC PETITION NO.

PE01504

Name of petitioner

Kathie Mclean-Toremar

Petition title

Party litigants - Civil Appeals to the Supreme Court

Petition summary

Asking the Scottish Parliament to urge the Scottish Government to consider changing the current legislation regarding Civil Appeals from the Court of Session to the Supreme Court. In accordance with paragraph 1.8 appeals from the Court of Session to the Supreme Court, a party litigant does not have the same rights as a criminal, a murderer, a sex offender or another person making the same Appeal.

Action taken to resolve issues of concern before submitting the petition

I have contacted Lord Gill, reply Legal Secretary to the Lord President directing me to www.supremecourt.gov.uk (paragraph 1.8) no answer directly from Lord Gill. No answer to my question.

I have contacted Kenny Macaskill. Correspondance Unit replied 25th February 2013 'a reply will be sent as soon as possible' no direct answer from Mr. Macaskill and no further information to me. No answer from Kenny Macaskill to date. Received letter from Access to Justice, did not correspond with my question. But stated 'they appreciate the challenges of self representation'

I have contacted my MSP, Michael Russell has forwarded my query to Roseanna Cunningham MSP 'who has responsibility for legal reform in the Scottish Government' dated 15th March 2013, reply to Michael Russell from Roseanna Cunningham, stating that Mrs Toremar would need specialist legal advice to bring a case under the Human Rights Act and that she is consulting on the Courts Reform Bill. 'There is nothing I can usefully add'. No answer to my question.

I have contacted my MEP George Lyon replied 'cannot give you legal advice'.

Petition background information

The hurdles and barriers which are in place for a party litigant to be able to proceed to the Supreme Court are insurmountable. In theory a party litigant is told to approach a solicitor/advocate with their case who in turn can approach counsel for the required signature, unfortunately in practice this is absolutely impossible, due to the fact that having been a party litigant in the Court of Session, and having lost your case and then

your appeal the term 'conflict of interest' comes into the equation, by this I mean that a solicitor will not represent you because he has perhaps taken instructions from solicitors that have handled your case in the past, or received instructions from solicitors who were representing the defenders in your case or maybe when you are 'so far down the line' they have not been party to a party litigants proceedings in their case, they have not presented the case to a counsel previously, and the Legal Aid board will not support an application at this stage, and you only have 42 days to take action and make the application to the Supreme Court. So the fact is a party litigant has no direct access to the Supreme Court. Facts www.supremecourt.gov.uk Appeals from the Court of Session in Scotland, paragraph 1.8 states 'as a general rule, permission to appeal is not required from and interlocutor of the Inner House of the Court of Session on the whole merits of the cause. The appeal must be filed within 42 days of the interlocutor appealed from, and the notice of appeal must be signed by two Scottish counsel who must also certify that the appeal is reasonable'.

I am calling on the Scottish Parliament to urge the Scottish Government to consider the need to change the current legislation that states as above in paragraph 1.8 that two Scottish counsel MUST sign the appeal. A person being a party litigant for whatever reason be it monetary (they cannot afford a solicitor) they cannot get Legal Aid (perhaps they work and earn a low wage but do not meet the required criteria required by the Legal Aid board) or conflict of interest of the solicitor, and so therefore are then forced to represent themselves. A party litigant does not have the right to approach counsel at the Court of Session or at the counsels chamber, in fact a party litigant is not allowed under any circumstances to speak, contact or indeed engage counsel. Only a solicitor and in fact only a solicitor practising in Edinburgh can contact a counsel. Party litigants are therefore denied the opportunity to proceed through the echelons of the appeals process.

A party litigant cannot approach the Supreme Court without the two signatures of Scottish Counsel which as explained is impossible to obtain. With this fact in mind this action is a breach of the Human Rights Act Article 6 'Inequality of Arms'. (new paragraph) Not only is a party litigant denied the opportunity to proceed with their case to the Supreme Court but according to www.ECHR.com The European Court of Human Rights at FAQ (frequently asked questions) it states 'Applications must meet certain requirements if they are declared to be admissible by the court, otherwise the complaint will not even be examined. Courts in the country concerned, up to the highest possible level of jurisdiction. In this way the state itself is given an opportunity to provide redress for the alleged violation at national level. An applicant's allegations must concern one or more of the Rights defined by the Convention. The Court cannot examine complaints concerning violations of any other Rights. Applications must be lodged with the Court within the six months following the last judicial decision of the case which will usually be a judgement by the HIGHEST COURT in the country concerned. The applicant must personally, and directly be a victim of a violation of the convention and must have suffered a significant disadvantage. It should not be forgotten of course that applications can only be lodged against one or more of the states participating in the convention and not against any individual.

The reason I am asking the committee to consider my petition is the fact that I as a party litigant have found myself in this position with my case that has spanned some thirteen years. I am being denied the right to proceed with my case due to the fact of paragraph 1.8. I and every other party litigant in Scotland are being denied the right to access justice, which is apparently afforded to every other citizen in the United Kingdom including convicted criminals serving life sentences.

The legislation needs to be changed as it gives rise to 'Inequality of Arms' which is a breach of the Human Rights Act. It is unjust, the opportunity to proceed through all stages of Scotland's appeals process must be available to all who seek it. Where the wheels of justice for a party litigant grind to a halt with no other avenues available this surely cannot be right in a free and democratic society. The action that needs to be taken in my view is to change the legislation and allow a party litigant to have the right to perhaps approach counsel at source i.e. in their chambers, or perhaps a party litigant could be allowed to approach the Supreme court directly. As past experience dictates

there are very few party litigants in the Court of Session, in fact there are no kept records of how many party litigants represent themselves in the Court of Session ,so it would not lead to a huge influx of inexperienced court users. A system must be in place that allows equal justice for all.If this action is not taken then we have a system that is prejudice and unevenly balanced. If a party litigant cannot have there appeal signed by two counsels simply because they are not allowed to approach them,then you do not have the ability and the right to take your appeal to the Supreme Court which is the highest court in this land, and therefore are again restricted from access to justice. As a party litigant cannot refer to the Supreme Court they also do not meet the criteria for an application to the European Court of Human Rights www.ECHR.com which states that you must have gone to the highest court of the land in your country,so with this in mind a party litigant is again denied access to justice. The system/legislation at the moment creates a Catch 22 situation of which all party litigants in Scotland will or have found themselves in. This system must be changed for equality for all.

I would appreciate if the committe could please ask Lord Gill the Lord President as to what is his opinion on paragraph 1.8.And as to why his office replied to my question of the feasibility of paragraph 1.8 by simply directing me to a website ie www.supremecourt.gov.uk and no actual answer to my question.I would also appreciate the committee asking Access to Justice Scotland as to why did they inform me that 'it's the fundamental aim of the Scottish Governments Making Justice Work for All programme to make Scotland a forum of choice for litigation to ensure everyone has access to justice'(that would be everyone except a party litigant)When under the current legislation this is clearly and patently obviously not the case.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/partylitigants>

Related information for petition

www.supremecourt.gov.uk paragraph 1.8 Appeals from the Court of Session.
www.ECHR.com FAQ
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www.scottishgovernment.com Civil Courts and tribunals, Court of Session 'Decision of the Court of Session in Appeals are subject to ultimate appeal to the House of Lords.' Making Justice Work Programme.'(not a possibility for a party litigant under this programme)

I have a letter from the Supreme Court informing me that a party litigant has NEVER been able to access the Supreme Court according to there records.

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

0

Closing date for collecting signatures online

20 / 12 / 2013

Comments to stimulate online discussion

Why do party litigants have limited access to justice in the Scottish courts - No direct access to justice in the Supreme Court (paragraph 1.8 Appeals Court of Session)-and no access to justice in the Court of Human Rights. Breaching Article 6 Inequality of Arms (Human Right Act) No money- No Justice- No rights . Why treat party litigants differently. Why give access to Justice to convicted criminals,ie. murderers,child sex offenders,sex traffickers etc and not a party litigant.