

The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners (Case No: CO/1306/2016)

PRESS SUMMARY – [10 July 2017]

BACKGROUND TO THE JUDICIAL REVIEW

The conflict in Yemen. Since early 2015, parts of Yemen have been in the control of Shia-Zaydi Houthi rebels loyal to former President Salah [39]. On 25th March 2015, a Coalition led by Saudi Arabia responded to a request for assistance by President Hadi and commenced military operations against the Houthi in Yemen [41]. Terrorist organisations, such as Al-Qaeda and Daesh operate in Yemen [44]. Saudi Arabia use UK-supplied arms in the Yemen conflict [48].

Legal regime. The Secretary of State for International Trade has responsibility for licensing the export of arms on advice from the FCO and MoD [1]. Since 2014, the Secretary of State has adopted much of the European Council Common Position 2008/944/CFSP (“The Common Rules Governing the Control of Exports of Military Technology and Equipment”) as the relevant guidance under s.9 of the Export Control Act 2002. Criterion 2c of the guidance provides that the Government “*will not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of International Humanitarian Law*” [8].

Claimant’s case. The Claimant challenges the Government’s continued grant of licences for UK arms sales to Saudi Arabia principally on the ground that the Secretary of State acted irrationally in deciding Criterion 2c was not met. A substantial body of evidence from NGOs and international bodies suggests there was a “*clear risk*” of a “*serious violation*” of International Humanitarian Law. No other conclusion was open to the Secretary of State in the face of the evidence, and it is no longer lawful to license the sale of arms to Saudi Arabia [51-54]. The Claimant’s case was strongly supported by the Intervenors. [55-56]

Respondent’s case. The Secretary of State submits that the UK Government operate a robust system for determining whether Criterion 2c is met and uses more sophisticated sources of information than those available to the sources relied upon by the Claimants. His conclusion that Criterion 2c was not met is rational and not open to challenge on public law grounds. [57-58].

JUDGMENT (Lord Justice Burnett and Mr Justice Haddon-Cave)

For the reasons set out in the Open and Closed Judgments, the Claimant’s claim for judicial review is dismissed. [213-214]

REASONS

Having studied a large volume of material supplied by the parties comprising both Open and Closed material (which for national security reasons cannot be referred to in open court and is dealt with in the Closed Judgment), the Court drew the following conclusions:-

The reports relied upon by the Claimant represent a substantial body of evidence suggesting that the Coalition has committed serious breaches of International Humanitarian Law in the course of its engagement in the Yemen conflict. However, this open source material is only part of the picture.

The MoD had access to a wider and qualitatively more sophisticated range of information than that available to the Claimant's sources, in particular (i) Coalition fast-jet operational reporting data; (ii) high-resolution MoD-sourced imagery; and (iii) UK Defence Intelligence reports and battle damage assessment (much of which is sensitive is in Closed material) [117]. The exercise carried out by the MoD and FCO has all the hallmarks of a rigorous and robust, multi-layered process of analysis carried out by numerous expert Government and military personnel, upon which the Secretary of State could properly rely [120]. The UK has considerable insight into the military systems, processes and procedures of Saudi Arabia adopted in Yemen, due to its close and high level contacts. The MoD also provides significant training to the Saudi armed forces in relation to targeting and compliance with International Humanitarian Law [121]. There has been extensive political and military engagement with Saudi Arabia with respect to the conduct of military operations in Yemen and International Humanitarian Law compliance [126]. Saudi Arabia has sought positively to address concerns about International Humanitarian Law and set up a permanent investigatory body [128]. Saudi officials made regular statements confirming Saudi Arabia's commitment to compliance with International Humanitarian Law [134]. The regular updates produced by the FCO on International Humanitarian Law risks with regard to Yemen show a rigorous process of analysis [150ff.]. There was no public law (*Tameside*) failure as regards the scope of the inquiries made or the questions asked by the Secretary of State. In particular, there was no duty on the Secretary of State to make a determination of the likelihood of a breach of International Humanitarian Law having been committed by the Coalition in relation to every past reported incident of concern [177]. The Secretary of State's decision not to suspend export licences to the Kingdom of Saudi Arabia was not irrational or unlawful [193].

In summary, the Court held that "...the Open and Closed evidence demonstrated that the Secretary of State was rationally entitled to conclude as follows: (i) the Coalition were not deliberately targeting civilians; (ii) Saudi processes and procedures have been put in place to secure respect for the principles of International Humanitarian Law; (iii) the Coalition was investigating incidents of controversy, including those involving civilian casualties; (iv) the Saudi authorities has throughout engaged in constructive dialogue with the UK about both its processes and incidents of concern; (v) Saudi Arabia has been, and remains, genuinely committed to compliance with International Humanitarian Law; and (vi) there was no "real risk" that there might be "serious violations" of International Humanitarian Law (in its various manifestations) such that UK arm sales to Saudi Arabia should be suspended or cancelled under Criterion 2c." [199] In an area where the Court is not possessed of the institutional expertise to make the judgments in question, it should be especially cautious before interfering with a finely balanced decision reached after careful and anxious consideration by those who do have the relevant expertise to make the necessary judgements. [209].

Closed material. The Closed material provides valuable additional support for the conclusion that the decisions made by the Secretary of State not to suspend or cancel arms sales to Saudi Arabia were rational and is dealt with in the Closed Judgment. [212]

References in square brackets are to paragraphs in the Open Judgment.

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Open Judgments are public documents and are available at: <https://www.judiciary.gov.uk/judgments/>