

**18 January 2019**

**The Queen (on the application of Maha El Gizouli)  
And  
The Secretary of State for the Home Department  
CO/3449/2018**

**The Right Honourable the Lord Burnett of Maldon  
Lord Chief Justice of England and Wales**

**The Honourable Mr Justice Garnham**

**PRESS SUMMARY  
(not part of the judgment)**

1. The issue raised in this claim for judicial review is whether it is lawful for the Home Secretary to authorise mutual legal assistance (“MLA”) to a foreign state in support of a criminal investigation which may lead to prosecution for offences which carry the death penalty, without requiring an assurance that the prosecution would not seek the death penalty.
2. The claimant is the mother of Mr El Sheik, who is believed to be detained by Kurdish forces in northern Syria. He is accused of involvement in acts of barbaric terrorism in Syria. He is one of the so-called Beatles.
3. The US authorities are contemplating seeking his surrender from Syria to America for prosecution for offences that might carry the death penalty. There has been a UK police investigation. The

Home Secretary decided to provide MLA to the US authorities which might be used in such a prosecution, without requiring an assurance that the death penalty would not be imposed in the event of conviction.

4. The claimant advanced five grounds in support of the argument that the decision was unlawful:
  - i) It is unlawful for the Home Secretary to exercise his powers under the royal prerogative to provide MLA which might facilitate the imposition of the death penalty or substantially contribute to the risk of its imposition.
  - ii) The decision is flawed by a series of misdirections and failures to have regard to relevant conditions.
  - iii) The decision is inconsistent with the Government's policy of unequivocal opposition to the death penalty, and thus unlawful.
  - iv) The decision violates the claimant's rights under the ECHR (not her son's rights, it being recognised that he is outside the jurisdiction of the ECHR).

- v) The provision of MLA breaches the Data Protection Act 2018.
5. The court (The Lord Burnett of Maldon CJ and Mr Justice Garnham) have today handed down the judgment and rejected the claim. Ground 1 is considered between paras [40] and [96], ground 2 between paras [97] and [122]. ground 3 between paras [123] and [128]; ground 4 between paras [129] and [140] and ground 5 between paras [141] and [217].
  6. On ground 1, neither Customary International Law nor the Common Law render the decision unlawful.
  7. On ground 2, the Home Secretary did not misdirect himself as alleged or make the errors suggested.
  8. On ground 3, the underlying policy permitted exceptions to the general approach of requiring assurances.
  9. On ground 4, the claimant's ECHR rights under articles 3 and 8 are not violated by the provision of MLA to the US authorities relating to her son's alleged activities in Syria.
  10. On ground 5, for a variety of reasons, to the extent that the provision of MLA includes "personal data" relating to the

claimant's son, the Data Protection Act 2018 does not prohibit its transfer to the US.

**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. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments>**