



Judiciary of England and Wales

SHAMIMA BEGUM v THE SECRETARY OF STATE FOR THE HOME DEPARTMENT [2024] EWCA Civ 152

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CIVIL DIVISION, ON 23 February 2024 (The Lady Chief Justice, Bean and Whipple LJ)

BACKGROUND TO THE APPEAL

1. Shamima Begum was born in the UK in August 1999. She lived and attended school in Tower Hamlets. Her parents are of Bangladeshi origin and, through them, Ms Begum had Bangladeshi citizenship at least until her 21st birthday. In February 2015 Ms Begum, then aged 15, travelled via Turkey to Syria and aligned with the organisation ISIL (Islamic State of Iraq and the Levant, also known as ISIS or Daesh), which controlled territory described as the caliphate. She was married to an ISIL fighter soon after arriving. She went on to have three children, none of whom survived. She was still in the caliphate when it collapsed in January 2019 and was taken to a camp in north east Syria.
2. Section 40(2) of the British Nationality Act 1981 (“BNA 1981”) gives the Secretary of State (in practice the Home Secretary) power to deprive a person of British citizenship if satisfied that deprivation is conducive to the public good. On 19 February 2019, without prior notice to Ms Begum, the then Secretary of State made an order depriving her of British citizenship on the grounds that it would be conducive to the public good to do so because her return to the UK would present a risk to national security.
3. There is a right of appeal to the Special Immigration Appeals Commission (“SIAC”) against orders for deprivation of citizenship made on national security grounds. On 3 May 2019, Ms Begum applied for leave to enter the UK so that she could take part in her appeal to SIAC. Her application was refused. On 26 February 2021, the UK Supreme Court held that the Secretary of State acted lawfully in refusing Ms Begum leave to enter the UK for the purposes of her appeal to SIAC. Ms Begum elected to proceed with that appeal, notwithstanding that she could not give evidence or be physically present.
4. On 22 February 2023 SIAC dismissed Ms Begum’s appeal against the deprivation decision. The issue in this appeal is whether SIAC was right to conclude that the deprivation decision was lawful.

JUDGMENT

5. The Court of Appeal unanimously dismisses the appeal.

REASONS FOR THE DECISION

6. Ms Begum put forward five grounds of appeal, each of which was rejected.

Ground 1: ECHR Article 4

- 6.1 The first ground was that the Secretary of State failed to consider whether Ms Begum had been a potential victim of trafficking for the purposes of sexual exploitation and that this failure breached the obligations owed to her under Article 4 of the European Convention on Human Rights (“ECHR”). SIAC had found that there was at the very least a “credible suspicion” that she had been trafficked for such purposes in 2015. It was not argued in the Court of Appeal that this created an absolute bar to any deprivation order.
- 6.2 The Court of Appeal concluded that Article 4 of the ECHR gave rise to no obviously material consideration in the context of the deprivation decision. The Article 4 duties relied on were the operational duties (comprising the protective duty and the recovery duty), the non-punishment principle, the investigative duty, and the restitutionary duty [74].
- 6.3 There were two obstacles in the way of Ms Begum’s arguments based on breach of the protective duty. The first was that SIAC found only an arguable breach of the protective duty by organs of the State, not an actual breach. The second was the passage of time between the arguable breach in 2015 and the deprivation decision in 2019, and the lack of any causal link between the two incidents [78].
- 6.4 The recovery duty did not extend to repatriating a former victim of trafficking if they had been trafficked abroad; Article 16 of the European Convention Against Trafficking did not assist the appellant in establishing such a duty [79]-[81].
- 6.5 The non-punishment principle also did not assist Ms Begum. There is no authority to suggest that the principle of non-punishment extends beyond criminal prosecutions. To extend the principle to a deprivation decision would go beyond incremental development of the European Court of Human Rights jurisprudence [82].
- 6.6 The investigative duty, and the argument that any investigation into the suspected trafficking in 2015 could only be effective if Ms Begum were present in the UK, was not an obviously material consideration for the Secretary of State when making the deprivation decision. There are three reasons for this: (1) it would be tantamount to an obligation to repatriate: since this does not exist as an operational duty, it would be surprising if it existed as an investigative duty; (2) it would be inconsistent with the Supreme Court’s decision that the Secretary of State was not required to give Ms Begum leave to enter to present her appeal; and (3) any investigative duty is only to take reasonable steps, and SIAC were right to find that reasonable steps do not extend to repatriating a person assessed to pose a threat to national security [85].
- 6.7 No restitutionary duty was owed in the instant case, as there was no established breach of Article 4: a possible or arguable breach is insufficient to trigger the restitutionary duty. Further, the asserted breach occurred four years before the deprivation decision [88-89].
- 6.8 Further, the focus of a deprivation decision on the grounds of national security must be the assessment of risk; the court did not accept that an individual assessed as presenting a risk to national security must be repatriated, or even that the Secretary of State is required to consider her repatriation, in order to meet obligations which might be owed under any Article 4 [91].

Ground 2: Trafficking issues at common law

6.9 The second ground was that the Secretary of State failed to take into account the possibility that Ms Begum had been a victim of trafficking for the purpose of sexual exploitation; it was submitted that this was a breach of his duties at common law. Although the information before him did not discuss the case in terms of ECHR Article 4 or of the European Convention Against Trafficking, the Secretary of State was aware of the circumstances of Ms Begum's departure to Syria and the materials before him powerfully expressed the view that people who were children when they went to align with ISIL should be considered first and foremost as victims. The Secretary of State took into account the possibility that she had been a victim of trafficking [94]. The assessment was kept under review after February 2019 [95]. SIAC was entitled to find that the issue of whether Ms Begum had travelled voluntarily was within the expertise of the intelligence agencies [97]. Voluntariness of travel was not a binary question and she may well have been influenced and manipulated by others but still have made a calculated decision to travel to Syria and align with ISIL. The assessment of the national security risk was a question of evaluation and judgment entrusted by Parliament to the Secretary of State [98].

Ground 3: De facto statelessness

6.10 The third ground was that the Secretary of State failed to consider that Section 40 of the BNA 1981 prohibits the making of a deprivation order if the consequence would be to make the person concerned stateless. It is now accepted that this means *de jure* stateless (that is to say stateless as a matter of international law), and that the deprivation order did not make Ms Begum *de jure* stateless since she still retained her Bangladeshi citizenship in February 2019. However, it was argued under Ground 3 that the Secretary of State failed to consider that the deprivation order would make her "*de facto* stateless" since there was no realistic possibility of the Bangladeshi authorities permitting her to enter that country. SIAC had held, and the Court of Appeal agreed, that it was sufficient that the ministerial submission and accompanying documents put before the Secretary of State when he made the decision indicated that there was no realistic possibility of her being permitted to enter Bangladesh. It was not necessary that he should also have been asked to consider the concept of *de facto* statelessness. [102]

Ground 4: Procedural Fairness

6.11 SIAC had held, departing from its previous case law dating back to *Al-Jedda v Secretary of State for the Home Department*¹, that Ms Begum should have been notified of the Secretary of State's intention to make a deprivation order against her and given the opportunity to make representations. The Court of Appeal held that at least a main purpose, if not the main purpose, of s 40(2) BNA 1981 was to protect the public from a threat to national security, which could be frustrated by a requirement to invite

¹ *Al-Jedda (No. 2) v SSHD* (SC-66-2008, 18 July 2014)

representations prior to a deprivation decision [106]. Notifying a person abroad of an intention to remove their citizenship could enable that person to make a pre-emptive return to the UK and frustrate the purpose of the deprivation decision [107].

6.12 Those deprived of their citizenship are afforded an appellate level merits review of the deprivation decision through SIAC [110-111]. This distinctive right to appeal and the risk of pre-emptive action are compelling reasons to construe s 40(5) BNA 1981 as excluding any right to prior consultation before a deprivation decision is made on national security grounds as was held in *Al-Jedda* [112]. SIAC had fallen into error in concluding that Ms Begum was entitled to the opportunity to make representations before the Secretary of State took the deprivation decision [113].

6.13 In any event, however, SIAC was correct to rule that it was immaterial that Ms Begum was not afforded the opportunity to make submissions prior to the deprivation decision [114]. It was inevitable that the Secretary of State would have made the same decision, regardless of possible representations made by Ms Begum [121].

Ground 5: The public sector equality duty (“PSED”)

6.14 The deprivation decision was exempt from considerations of the PSED under section 149 of the Equality Act 2010, pursuant to the exemption created by section 192 of the same Act, as it concerned the safeguarding of national security [122]. In this case, the PSED concerns were whether the exercise of deprivation powers disproportionately applied to British Muslims and/or impacted detrimentally upon the relations between members of Muslim communities and others [124]. The national security exemption applies to *any* exercise of functions or powers [131]. As such, the deprivation decision was exempt from the duties that arose under section 149 [135]. The national security exemption did not require the Court to undertake a separate proportionality assessment. In any event, SIAC had been correct to find that the deprivation power was exercised in a proportionate manner [136].

CONCLUSION

7. It could be argued that the decision in Ms Begum’s case was harsh; it could also be argued that Ms Begum is the author of her own misfortune. But it is not for the court to agree or disagree with either point of view. The only task of the Court was to assess whether the deprivation decision was unlawful. Since it was not, Ms Begum’s appeal is dismissed [138].

POSTSCRIPT

8. After the Court had sent the draft open and closed judgments to the Government Legal Department and the Special Advocates in December 2023, as it is required to do by the Rules of Court, a further closed hearing took place on 2 February 2024, as a result of which parts of the closed judgment were put in open and set out in an Annex to the open judgment [139]. In that Annex, further reasons are given to support the Court’s dismissal of Ground 4 (Procedural Fairness) and Ground 5 (PSED). The Special Advocates had advanced a further ground, referred to as “Ground 6: the wrong target”, which was also dismissed with reasons.

Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment ([2024] EWCA Civ is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>