



Courts and Tribunals Judiciary

Press Summary

(1) Dalston Projects Limited, (2) Sergei Georgievich Naumenko, (3) Prism Maritime Limited -v- Secretary of State for Transport

and

Eugene Shvidler -v- Secretary of State for Foreign, Commonwealth and Development Affairs

[2024] EWCA Civ 172 Sir Geoffrey Vos, Master of the Rolls, Lord Justice Singh and Lady Justice Whipple

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CIVIL DIVISION, handed down on 27 February 2024

[References in bold in square brackets are to paragraphs in the judgment of the Court of Appeal]

Background to the Appeals

1. The Court heard two appeals together. Both appeals concerned decisions taken by the Secretary of State under the Russia (Sanctions) (EU Exit) Regulations 2019 (the “2019 Regulations”). In the first, *Dalston*, the Secretary of State for Transport had detained a motor yacht named the “Phi” which was beneficially owned by a Russian national and resident, Mr Sergei Naumenko. In the second, *Shvidler*, the Secretary of State for Foreign, Commonwealth and Development Affairs had designated Mr Shvidler, a naturalised UK/US citizen of Russian origin. This exposed him to sanctions under the 2019 Regulations.
2. The decisions were the subject of unsuccessful challenges in the Administrative Court. The appellants in each case appealed to the Court of Appeal.

Decisions

3. The Court of Appeal unanimously dismissed both appeals. The Master of the Rolls gave a short judgment concurring with the lead judgment of Lord Justice Singh.

Dalston

The facts

4. The Phi was beneficially owned by the Second Appellant, Sergei Naumenko, a Russian citizen who was ordinarily resident in Russia [42]. The evidence showed that Mr

Naumenko had accumulated his wealth through various business ventures in Russia, but Mr Naumenko denied that he had met President Putin or had participated in any political or near-political organisations or had held any positions in the state or municipal authorities of the Russian Federation [43]. Regulation 57D empowers the Secretary of State to give a detention direction in respect of a ship owned by “persons connected with Russia”; regulation 57C empowers the Secretary of State to give a movement direction in similar circumstances [46].

The Court’s reasons

5. The Appellants advanced six grounds of appeal against the decision to detain the Phi under the 2019 Regulations. The Court addressed them in the order in which they were presented [62].
6. **Ground 2, proper purpose:** The Court held that the terms of the legislation were clear and it was sufficient for the exercise of that power that the individual was connected with Russia [68].
7. **Ground 4, taking into account irrelevant considerations:** the Appellants argued that the judge was not entitled to hold that the Secretary of State’s statements, made a few hours after the vessel was detained, that the vessel was owned by a person “with close connections to Putin” who had “made their money through their association with Putin” were mere “excusable political hyperbole” which did not feature in the Secretary of State’s decision-making [79]. The Court was troubled by the judge’s reference to hyperbole, because these statements were incorrect. The statements ought not to have been made and should not have been taken into account when exercising a discretionary power [86]. But the judge was right to conclude that these statements made no difference to the outcome [87].
8. **Ground 3, failure to state grounds:** the Appellants argued that the judge was wrong to hold that the statutory requirement to state the grounds for detention did not amount to a requirement to give reasons [90]. The Court held that the statutory scheme does not require the giving of reasons [98] and that in any event the explanation which was given (that the Phi was being detained because it was owned by Mr Naumenko) met the statutory requirement [99].
9. **Ground 5, the April 2022 decision was a “holding measure”:** the Appellants argued that the judge was not entitled to reject their submission that the decision taken in April 2022 (as one of three decisions which resulted in the detention of the Phi) was merely a holding measure while further evidence was collected [101]. The Court held that the Secretary of State was not of the view that this was merely a holding decision. Rather the position was that he was content to maintain the continued detention of the Phi but would be willing to consider any further evidence that might be presented on behalf of Mr Naumenko [107].
10. **Ground 1, proportionality:** the Appellants argued that the judge was wrong to conclude that the detention of the Phi was a proportionate interference with their rights under Article 1, Protocol 1 (“A1P1”) of the European Convention on Human Rights (“ECHR”) [110]. The Court held that the judge had correctly directed himself on the law [111]. The Court considered the judge’s application of the four limb test in *Bank*

Mellat v HM Treasury (No 2) [2013] UKSC 39; [2014] AC 700 at [74]: (i) It was common ground that the decision had a legitimate aim [113]. (ii) The Court held that there was a rational connection between the decision to detain and that legitimate aim [119] and, further, that the patronage system in Russia and the need for loyalty to President Putin of wealthy Russians like Mr Naumenko provided an additional reason for concluding that he was likely to have benefited from the Russian regime [120]. (iii) There was no serious suggestion that, if the other criteria were met, there would be any less intrusive means [113]. (iv) A fair balance had been struck between the general interests of the community and individual rights [126].

11. **Ground 6, conversion:** the Appellants argued that the judge should have held that the unlawful detention of the Phi amounted to the tort of conversion [132] but it was common ground that this would only arise if the appeal otherwise succeeded; it was not necessary or appropriate to say anything on this issue [133].

Shvidler

The facts

12. The Secretary of State designated Mr Shvidler on the amended ground that there were reasonable grounds to suspect that Mr Shvidler was connected with a person (Mr Abramovich) who is, or has been, involved in obtaining a benefit from, or supporting the Government of Russia; (ii) there are reasonable grounds to suspect that Mr Shvidler himself is, or has been, involved in obtaining a benefit from the Government of Russia through working as a non-executive director of Evraz, an entity carrying on business in sectors of strategic significance to the Government of Russia, namely the extractives sector [154]. The designation was under Regulation 6 of the 2019 Regulations, which permits the Secretary of State to designate where he has “reasonable grounds to suspect that a person is an involved person” and considers designation to be appropriate. An involved person is a person who, amongst other things, has been involved in obtaining a benefit from the Government of Russia or is associated with a person who is so involved [144].

The Court’s reasons

13. **Ground 1A, correct approach to the issue of proportionality:** the Appellant argued that the judge had erred in his approach to proportionality of the interference with his rights under ECHR Article 8 and A1P1. The Court held that the judge had at times confused the issue of deference to the views of the Secretary of State with the different question of whether the role of the court must actually be to form its own judgment when assessing proportionality or whether it is confined to reviewing the reasonableness of the Secretary of State’s analysis. Ground 1A succeeded and the Court would assess proportionality for itself by way of review and not rehearing in accordance with the approach in *Re B* [169].
14. **Ground 1B, association with Mr Abramovich:** the Appellant argued that the judge misdirected himself when determining that the Appellant was associated with Mr Abramovich and that the Court should conclude that there was no such association [176]-[177]. The Court rejected that argument and held that the Secretary of State did

have reasonable grounds to suspect that Mr Shvidler had received significant financial benefits from Mr Abramovich [179]-[185].

15. **Ground 1C, rational connection:** the Appellant argued that the judge had misdirected himself in concluding that there was a rational connection between the designation and the legitimate aim of the 2019 Regulations, and that the Court should now conclude there was no such rational connection [187]-[188]. The Court rejected that argument and held that there obviously was a rational connection [192]. It was not open to the Appellant to resurrect a discrimination argument under the heading of rationality when that argument had been rejected by the judge below as “hopeless” [193]-[195].
16. **Ground 1D, less intrusive measures:** the Appellant argued that the judge ought to have concluded that the aim of sending a political message to the Government of Russia, the international community and others could be achieved more effectively by less intrusive measures [198]. The Court held that the mere fact that there may be other means available does not mean that the proportionality test is not satisfied. There is room for judgment in this area [201].
17. **Ground 1E, fair balance:** the Appellant argued that the judge had misdirected himself on the approach to fair balance between the rights of the Appellant and the interests of the community [205] and that the Appellant’s designation had no real prospect of delivering any real benefits, whether practical or symbolic [206]. The Court accepted that these sanctions were both severe and open-ended. If sanctions are to be effective, a serious price has to be paid by those who are designated. On the other side of the balance is Russia’s very serious violation of international law and the need to bring the invasion of Ukraine to an end [210]. Each individual designation does make a contribution to the overall impact of all the measures imposed under the sanctions regime [213]-[214].

NOTE: This summary is provided to help in understanding the Court’s decision. It does not form part of the judgment. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, <https://caselaw.nationalarchives.gov.uk> and www.bailii.org