



JUDICIARY OF
ENGLAND AND WALES

**BBC and Dominic Casciani v Secretary of State for Justice
High Court (Queen's Bench Division)
11 January 2012**

SUMMARY TO ASSIST THE MEDIA

The High Court (Lord Justice Hooper and Mr Justice Singh) has today ruled that the Justice Secretary's refusal to grant the BBC permission to have a face-to-face interview with Babar Ahmad was unlawful.

Background

The BBC and one of its home affairs correspondents, Mr Dominic Casciani, had applied for permission to conduct a face-to-face interview with Mr Babar Ahmad, who is currently detained at HMP Long Lartin, and whose extradition has been sought by the USA. The BBC also wished to broadcast the interview. The Justice Secretary refused permission to have a face-to-face interview at all on 22 September 2011 and the BBC seeks judicial review of that decision. (paras 1 - 6)

The facts relating to Mr Ahmad's situation and detention are set out in paras 7 - 29.

Discussion

The Court considers the Justice Secretary's current policy on prisoners' access to the media and the right to freedom of expression (paras 30 - 53). The claimant's case is set out in paras 54 - 61 and the Justice Secretary's case at paras 62 - 754. The Court's assessment of these is set out in paras 75 - 97.

On the facts of the case the Court found the Justice Secretary's decision of 22 September 2011 to be disproportionate and therefore incompatible with the right to freedom of expression in article 10. The Justice Secretary's decision was therefore unlawful. (para 97)

In giving the joint judgment of the Court, Mr Justice Singh said:

“In our judgment, it is difficult to think of a case which would fall within the exception if not the present one. We accept the claimants’ contention that, as a result of the particular combination of circumstances, this case is highly exceptional. By saying that we make it clear that we do not consider that the present case should be regarded as setting any precedent for other cases. It is because of the unusual combination of facts that the present case, in our view, justifies departure from the normal policy. More than that, in our view, the claimants’ rights under article 10 require that departure in the exceptional circumstances of this case, and the Secretary of State has not been able to justify denying those rights on the facts of this case. However, the Secretary of State is entitled to maintain the policy which he does: no challenge has been made to his entitlement to have such a policy in principle and to apply it to the great majority of cases. It is on the unusual facts of the present case that its application constituted a disproportionate interference with the right to freedom of expression.” (para 82)

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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.