



JUDICIARY OF
ENGLAND AND WALES

High Court (Administrative Court)

28 August 2013

Sylvie Beghal

-v-

Director of Public Prosecutions

SUMMARY TO ASSIST THE MEDIA

The High Court (Lord Justice Gross, Mrs Justice Swift and Mr Justice Foskett) has today dismissed an appeal by way of Case Stated against a conviction for wilfully failing to comply with a duty imposed under or by virtue of Schedule 7 to the Terrorism Act 2000.

The Court also rejected the submission that the Schedule 7 powers in question violated the Appellant's right under Articles 5, 6 and 8 of the ECHR. However, the Court urged consideration of a legislative amendment introducing a statutory bar to the introduction of Schedule 7 admissions in subsequent criminal trials.

Introduction

"The central (though not sole) issue on this appeal concerns the compatibility of the powers to "stop, question and detain" contained in Schedule 7 to the Terrorism Act 2000 ("TACT 2000" and "Schedule 7" respectively) with, in particular, Arts. 6 and 8 of the European Convention on Human Rights ("ECHR"). The appeal thus gives rise to the question of where the balance is to be struck between the rights of the individual and the public interest in safeguarding the country from terrorism. This is a challenging area for the law, requiring vigilance as to individual liberties while retaining a firm grasp of the practical needs of national security." (para 2)

"On 12 December 2011, at Leicester Magistrates' Court ... the appellant pleaded guilty to one charge of wilfully failing to comply with a duty imposed under or by virtue of Schedule 7, contrary to para. 18(1)(a) of that Schedule. That plea followed (1) a ruling by the District Judge that he had no power to stay the proceedings as an abuse of process of the Court on the grounds advanced by the Appellant and that only a higher Court could do so; (2) an indication from the District Judge that, in those circumstances, it was highly likely he would find the Appellant guilty of the charge in question." (para 3)

The Appellant appeals to the High Court by way of Case Stated.

Facts:

The facts are not disputed and are set out in paragraphs 6 – 14.

Relevant provisions

The Court sets out the relevant central statutory and ECHR provisions in paragraphs 15 – 24.

Rival Cases

The Court considers these in paragraphs 25 – 31.

Remedies

The remedies sought are set out in paragraphs 32 – 34.

Legislative History

This is set out in paragraphs 35 – 52.

The Independent Reviewer of Terrorism Legislation

The role of the Independent Reviewer is discussed in paragraphs 53 – 67.

Issue I (Articles 8 and 5, ECHR and Rights to Freedom of Movement)

The Court considers these issues in paragraphs 68 – 114.

Lord Justice Gross, giving the judgment of the Court, in relation to the Article 8 argument, concluded:

“It follows that the Appellant’s appeal based on Art. 8 ECHR fails. As a general matter, the Schedule 7 powers are neither arbitrary nor disproportionate. As expressed in *Bank Mellat (supra)* a fair balance has been struck between the rights of the individual and the interests of the community. Further, the challenge to the exercise of those powers based on the facts of this individual case likewise fails.” (para 112)

In relation to the Article 5 argument, Lord Justice Gross concluded:

“... On the facts of this case, the Respondent accepts that there was interference with the Appellant’s Art. 5 rights. The issue is whether such interference was justified. ... **Our conclusion under Art. 8 that the Schedule 7 powers of examination are lawful, accordingly determines the Art. 5 debate as well.” (para 113)**

On the Freedom of Movement argument, Lord Justice Gross concluded:

“We agree ... that the Appellant’s [Freedom of Movement] rights are important and serve to counter any argument (if and insofar deployed) that the Schedule 7 powers bit only on individuals who chose to travel. That said, **it seems clear to us that the argument as to [Freedom of Movement] rights is subsumed into the debate under Arts. 5, 8 and, to an extent (see below), 6 - and serves to shape the context of that debate. The Appellant’s [Freedom of Movement] rights do not require further and independent consideration and no more need be said of them.” (para 114)**

Issue II (Article 6, ECHR)

Two principal issues were canvassed under this heading. First, whether the Appellant's Art. 6 rights were engaged by the exercise of the Schedule 7 powers of examination. Secondly, if Art. 6 was engaged, whether the Appellant's Art. 6 rights were violated.

The Court considers these in paragraphs 115 – 146.

Lord Justice Gross, giving the judgment of the Court, concluded:

“Accordingly, we conclude that the Appellant’s Art. 6 rights were not engaged by the Schedule 7 examination. This conclusion is itself fatal to the Appellant’s appeal under Art. 6; if her rights under Art. 6 were not engaged they could not have been violated. It follows that the Appellant’s appeal under Art. 6 must be dismissed.” (para 133)

The Court went on to consider whether the Appellant's rights under Art. 6 were violated – on the assumption, contrary to our primary view, that those rights were engaged.

On this point the Court concluded:

“On this footing, we are satisfied that the safeguard provided by s.78 [PACE] is sufficient to prevent a violation of the Appellant’s Art. 6 rights.” (para 139)

It went on to state:

“It follows that on this ground too (if it arises) we dismiss the Appellant’s appeal under Art. 6. Accordingly, the Appellant’s appeal must be dismissed.” (para 144)

Lord Justice Gross, giving the judgment of the Court, added:

“Before parting from this chapter of the case, we add this. It is one thing to conclude that the Schedule 7 powers of examination neither engage nor violate a defendant’s Art. 6 rights; it is another to conclude that there is no room for improvement. For our part, we would urge those concerned to consider a legislative amendment, introducing a statutory bar to the introduction of Schedule 7 admissions in a subsequent criminal trial. The terms of any such legislation would require careful reflection, having regard to the legitimate interests of all parties but, given the sensitivities to which the Schedule 7 powers give rise, there would be at least apparent attraction in clarifying legislation putting the matter beyond doubt.” (para 146)

In a postscript, Lord Justice Gross, said:

“For the reasons given, we have concluded that the Schedule 7 powers of examination survive the challenges advanced before us. In short, the balance struck between individual rights and the public interest in protection against terrorism does not violate the fundamental human rights in question. As already touched upon in the context of Art. 6, it does not follow that there is no room for improvement.” (para 147)

-ends-

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.