



PRESS SUMMARY

R (on the application of Lord Carlile of Berriew QC and others) (Appellants) v Secretary of State for the Home Department (Respondent) [2014] UKSC 60
On appeal from [2013] EWCA Civ 199

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Clarke, Lord Sumption

BACKGROUND TO THE APPEAL

Mrs Maryam Rajavi is a dissident Iranian politician, resident in Paris. She has close links with Iranian opposition organisations, including Mujahedin e-Khalq, which was formerly a proscribed terrorist organisation but is now non-violent. In 1997, the Home Secretary excluded Mrs Rajavi from the UK on the ground that her presence “would not be conducive to the public good for reasons of foreign policy and in light of the need to take a firm stance against terrorism”. That exclusion remains in force.

In December 2010, Lord Carlile of Berriew, together with two other members of the House of Lords, asked the Home Secretary for a meeting to discuss lifting the exclusion to enable Mrs Rajavi to address meetings in the Palace of Westminster. The Home Secretary sought the advice of the Foreign Office. She replied in February 2011 stating that she had concluded that Mrs Rajavi’s admission to the UK would not be conducive to the public good. A further letter of May 2011, written in response to a letter before action from Lord Carlile and other members of the House of Lords, claimed that Articles 9 and 10 of the European Convention on Human Rights were not engaged but that the decision was in any event justified and proportionate. Lord Carlile and other members of the House of Lords launched judicial review proceedings in May 2011, arguing that the decision contravened their freedom of belief and expression rights under Articles 9 and 10. Mrs Rajavi herself later joined as a claimant. The Home Secretary issued second and third decisions in October 2011 and January 2012, supported by evidence from a Foreign Office official, stating that lifting the exclusion would cause significant damage to the UK’s interests in relation to Iran and place British people and property in Iran and the region at risk.

It is now common ground that Article 10 is engaged in relation to both Mrs Rajavi and the members of the House of Lords. But was the Home Secretary’s decision justified and proportionate? Both the judge and the Court of Appeal held that it was. The claimants appealed to the Supreme Court.

JUDGMENTS

The Supreme Court dismisses the appeal by a majority of 4-1 (Lord Kerr dissenting). Lord Sumption delivers the leading judgment. The other three majority judgments give similar reasons, but with differences of nuance.

REASONS FOR THE JUDGMENTS

Threshold argument

- The claimants argued that the Home Secretary’s reasons were legally irrelevant, because they depended on the potential reaction of a foreign state which did not share the values embodied in the Convention. The Supreme Court unanimously rejects this argument. Iran’s reaction is plainly factually relevant to the decision, and the correct emphasis is on the democratic values to be protected, not the circumstances prompting the need for protection [14-18, 63, 144-146].

Was the Home Secretary’s decision justified and proportionate?

- A predictive judgment of the executive about the likely reaction of a foreign country to a decision of the United Kingdom government is ordinarily entitled to a large measure of respect from the courts both (i) because the constitutional separation of powers assigns such judgments to the executive, and (ii) because the executive has greater institutional competence in this area by virtue of its greater specialised experience and the wider range of advice available to it. Where qualified rights under the Human Rights Convention are engaged, such as the Article 10 rights at issue in this case, the court must decide for itself whether they have been interfered with and if so whether the interference is justifiable. In this case, per Lord Sumption, the executive’s decision is rational, there are no grounds to challenge the good faith or the evidential base of the decision, and the Secretary of State had committed no error of principle, nor had she underrated the value of Article 10 rights or overstated the risk [19-47, 51]; per Lord Neuberger, the Home Secretary’s decision was proportionate and the Article 10 rights did not outweigh the risks she had identified [70-74]; per Lady Hale, on the basis of evidence now some years old, it had not been shown that the article 10 right claimed was sufficiently important to put at risk the UK’s “fragile but imperative” relationship with Iran [98-109]; and per Lord Clarke, there was no evidence before the court permitting it to doubt the strength of the Home Secretary’s reasons [111-117]. Accordingly, although the Court of Appeal was wrong to approach the issue on the usual domestic judicial review grounds, the appeal should be dismissed.
- Lord Kerr would have allowed the appeal. The courts will accord respect to the executive’s assessment of the risks and consequences of Mrs Rajavi’s being admitted to the UK, though it is not required to “frank” that decision. However, it is for the court to assess the importance of the right infringed. The court is both competent and constitutionally required to make such an assessment and it would be an error to attach special weight to the Home Secretary’s view on this point [150-162]. In this case, only the most compelling and pressing circumstances would justify a restriction on the right. The Home Secretary identifies solid countervailing factors, but the court should take into account the fact that these matters are unpredictable and that any retaliation would be perverse and rooted in anti-democratic beliefs. The risks cannot be precisely identified but the interference with the Article 10 right is direct and immediate [163-180].

References in square brackets are to paragraphs in the judgments

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:

<http://supremecourt.uk/decided-cases/index.shtml>