



17 December 2015

PRESS SUMMARY

R (on the application of Roberts) (Appellant) v Commissioner of Police of the Metropolis and another (Respondent) [2015] UKSC 79
On appeal from [2014] EWCA Civ 69

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Reed, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

This appeal involves a challenge to the compatibility of the police power contained in s 60 Criminal Justice and Public Order Act 1994 ('s 60'), with the right to respect for private life protected by article 8 of the European Convention on Human Rights ('ECHR'). S 60 permits a police officer to stop and search any person or vehicle for offensive weapons or dangerous instruments, whether or not he has any grounds for suspecting that the person or vehicle is carrying them, when an authorisation from a senior police officer, which must be limited in time and place, is in force.

On 9 September 2010, in response to a period of gang related violence in Haringey, Superintendent Barclay authorised the carrying out of searches under s 60 for 17 hours in parts of the borough, concluding that it was a proportionate response to protect members of the public from serious violence. That day, Police Constable Jacqui Reid was called to an incident in Tottenham involving a passenger who had not paid her fare on the No. 149 bus. The passenger was the appellant, Mrs Roberts. She had denied having identification with her and kept a tight hold on her bag. PC Reid used the power under s 60 to search her bag, which enabled Mrs Roberts' name to be established from a bank card.

Mrs Roberts brought judicial review proceedings against the police alleging breaches of a number of her rights under the ECHR. Both the High Court and Court of Appeal rejected her claims. The only claim pursued in her appeal to the Supreme Court was the alleged breach of article 8. She sought a declaration of incompatibility under s 4 Human Rights Act 1998 on the ground that the power is not 'in accordance with the law'. Article 8 requires the law to be sufficiently accessible and foreseeable for an individual to regulate his conduct accordingly and to have sufficient safeguards against the risk that it will be used in an arbitrary or discriminatory manner

JUDGMENT

The Supreme Court unanimously dismisses Mrs Roberts' appeal, holding that the safeguards attending the use of the s 60 power, in particular the requirements to give reasons both for the authorisation and for the stop and search, make it possible to judge whether the power has been exercised lawfully. Both the power and the particular search of Mrs Roberts were in accordance with the law. Lady Hale and Lord Reed give the only substantive judgment with which the other justices agree.

REASONS FOR THE JUDGMENT

The power found in s 60 is one of the few instances where Parliament has decided that stop and search powers without reasonable grounds to suspect the commission of an offence are necessary for the protection of the public from terrorism or serious crime. It was common ground in the appeal that the power interferes with the right to respect for private life but that it pursues a legitimate aim which is capable of justification under article 8(2). The issue was whether it also satisfied article 8(2) by being ‘in accordance with the law’ [3].

S 60 is directed towards the risk of violence involving knives and other offensive weapons in a particular locality. It depends on an authorisation by an officer of the rank of inspector or above, who reasonably believes that incidents involving serious violence may take place in any locality in his police area, and that an authorisation of up to 24 hours (renewable once) is expedient to prevent their occurrence by allowing stops and searches in order to discover offensive weapons. The exercise of the powers is subject to numerous safeguards and restrictions in the Police and Criminal Evidence Act 1984, the Code of Practice and the Standard Operating Procedures of the Metropolitan Police. Failure to comply with these safeguards renders the exercise of compulsory powers which interfere with individual freedom unlawful [7, 28-37].

The authorisation made on 9 September 2010 followed police intelligence reports indicating a risk of further violence in connection with rival gangs. When PC Reid attended the incident she considered that the appellant was holding her bag in a suspicious manner, and her experience was that it was not uncommon for women of a similar age to carry weapons for other people. She therefore conducted a search of the appellant’s bag exercising the s 60 power, and provided the appellant with a form explaining these reasons [10-13].

This is the first challenge to the s 60 power to come before the court. Previous case-law concerning similar stop and search powers establishes that some but not every ‘suspicion-less’ power would fail the requirement of lawfulness under the ECHR. It is often important to the effectiveness of the powers that they be exercised randomly and unpredictably. The question is whether the legal framework permits the court to examine the propriety of the exercise of the power [15-26]. Whatever the scope of the power, it must be operated in a manner which is compatible with the ECHR rights of any individual and be free of discrimination [42]. These constraints, together with disciplinary sanctions against police officers, guard against the risk that the s 60 power will be exercised when the officer does not in fact have good reasons for the decision [43]. The requirements attaching to the authorisation [44], the operation [45] and the actual encounter on the street [46], in particular the requirement to give reasons, should make it possible to judge whether the action was ‘necessary in a democratic society for the prevention of disorder or crime’. The law itself is not incompatible with article 8 [47]. Accordingly, a declaration under the Human Rights Act should not be made. Nor should there be a declaration that the guidance current at the time was inadequate or that the particular search of the appellant was not in accordance with the law [48].

References in square brackets are to paragraphs in the judgment

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.html>