



16 December 2015

PRESS SUMMARY

R (on the application of Wang Yam) (Appellant) v Central Criminal Court and another (Respondents) [2015] UKSC 76
On appeal from [2014] EWHC 3558 (Admin)

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Clarke, Lord Sumption, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEALS

Wang Yam was charged with the murder of Allen Chappellow and associated offences in 2007. He denied the murder charge and alleged that he had been given the deceased's cheques, credit cards and banking information by various gangsters.

The Crown applied for an order that part of the trial relating to evidence which Wang Yam wished to submit in his defence take place *in camera* (i.e. in a closed court) in the interests of national security and to protect the identity of a witness or other person. This order was granted in January 2008 by Ouseley J. At trial, because of the Wang Yam's difficulty in keeping distinct the sensitive and non-sensitive aspects of his evidence, the entire defence case was heard *in camera* in the presence of Wang Yam and his representatives. In January 2009 Wang Yam was convicted of murder and burglary and sentenced to life imprisonment.

In April 2011 Wang Yam lodged an application with the European Court of Human Rights (ECtHR) against the UK, complaining that his trial and conviction were unfair and therefore violated article 6.1 of the European Convention on Human Rights (ECHR). The UK submitted that the application should be declared manifestly ill-founded and inadmissible, or alternatively dismissed on the merits.

Wang Yam argued that he should be permitted to refer to the *in camera* material in his response to the UK's observations before the ECtHR. In February 2014 Ouseley J ruled that Wang Yam should not be able to disclose the *in camera* material to the ECtHR. Wang Yam applied for and was granted judicial review of that decision, but the application was dismissed on its merits. The Divisional Court allowed a 'leapfrog' appeal direct to the Supreme Court on the following questions:

"Is there a power... to prevent an individual from placing material before the European Court of Human Rights? If so, can the power be exercised where the domestic court is satisfied that it is not in the interests of state for the material to be made public even to the Strasbourg court?"

JUDGMENT

The Supreme Court unanimously dismisses Wang Yam's appeal. Lord Mance gives the judgment of the Court.

REASONS FOR THE JUDGMENT

In a purely domestic context the English courts have a discretion to refuse to permit disclosure of material deployed *in camera*. The issue before the Supreme Court is whether this power ceases to be

exercisable once an applicant to the ECtHR decides that he wishes to disclose the material to that court in the context of a complaint that the *in camera* proceedings made his trial unfair [1-2].

Wang Yam's case depends on the proposition that the courts below have discretion to prevent the disclosure of *in camera* material to the ECtHR [20]. This proposition depends in turn on the submission that such discretion would involve the UK in a breach of the international obligations under article 34 ECHR, which provides that:

“The Court may receive applications from any person... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right”.

Refusal to permit disclosure to the ECtHR does not constitute a breach of international law [22, 24-34]. The English courts have repeatedly found that it was both necessary and fair to hold part of the trial *in camera*. The *in camera* material formed part of Wang Yam's own defence and has been seen by both him and his legal representatives. The suggestion that its publication would have advanced this defence has been rejected as implausible. If any court is to reach the conclusion that the UK is in breach of article 34 it must be the ECtHR and not the English courts [25].

On Wang Yam's case he would be the sole judge of what is necessary at this stage for the effective presentation of his case to the ECtHR. Wang Yam relied on article 34, rather than article 38 ECHR, which provides that:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities”.

The ECtHR is able to decide under article 38 whether any further material should be requested from the UK to enable it to consider Wang Yam's case [27]. The case law of the ECtHR indicates that it will not act as a fourth-instance appeal court re-determining issues of national security, but rather it will review the domestic adjudication on the issues involved and, if satisfied of its fairness and thoroughness, may accept the outcome without insisting on automatic disclosure to itself of secret material [28-33]. This reason alone is sufficient to dismiss the appeal [34].

Even if refusal to permit disclosure to the ECtHR breached an international obligation, English courts would not be obliged automatically to give effect to such obligation. The UK takes a dualist approach to international law. The starting point when considering a general discretionary common law power is that domestic and international law considerations are separate. The decision-maker may take international law obligations into account but is not bound to do so [35]. In *R (Hurst) v London Northern District Coroner* [2007] 2 AC 189 even the minority who suggested that a domestic decision-maker should at least give consideration to international rights which can properly be regarded as fundamental went no further. In any event, given that an appeal lies to the ECtHR under article 38 ECHR, any obligation on the UK at this stage under article 34 could not be regarded as fundamental [36]. In this context, Ouseley J took an orthodox approach to his general discretion and therefore the appeal must also fail on the second ground [37-38].

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>