

FF v Director of Public Prosecutions

CO/11360/2012

High Court of Justice Queen's Bench Division Divisional Court

7 October 2014

[2014] EWHC 3419 (Admin)

2014 WL 5311914

Before: Lord Justice Laws Mr Justice Cranston

Tuesday 7 October 2014

Representation

Mr Tom Hickman (instructed by Deighton Pierce Glynn) appeared on behalf of the Claimant.

Mr Guglielmo Verdirame (instructed by Crown Prosecution Service) appeared on behalf of the Defendant.

Judgment

Lord Justice Laws:

1 By order made by me last week, this is a directions hearing though in fact it has proved possible to resolve the whole proceedings.

2 A short narrative of the background to the case may be found at paragraphs 2 to 8 of a judgment delivered by myself (sitting in this Court with Mr Justice Wilkie) at an earlier directions hearing on 19 June 2013:

"2 The claim concerns events arising out of political protests in Bahrain in February and March 2011. The claimant, who took part, says he was badly beaten and injured by police and held without charge. He was given a prison sentence. However, these proceedings are directed not to what befell the claimant but to allegations that Prince Nasser bin Hamad Al Khalifa, the son of the King of Bahrain, was directly involved in the torture of three individuals in prison in Bahrain.

3 On 5 July 2012 a dossier prepared by the European Center for Constitutional and Human Rights at Berlin, the ECCHR, which appears as an interested party, was submitted to the Director of Public Prosecutions. It contained evidence said to implicate Prince Nasser in the torture of detained prisoners in April 2011.

4 Arrest and prosecution of the prince was sought. The dossier was passed to the War Crimes team of the Metropolitan Police Counter Terrorism Command, S015. On 3 August 2012 the CPS wrote to the claimant's solicitors indicating

their view that Prince Nasser would enjoy immunity under [section 20 of the State Immunity Act 1978](#) as a member of the Bahraini royal household, and/or functional immunity pursuant to [section 1](#) of the 1978 Act in relation to any conduct of his in his role as Commander of the Royal Guard.

5 Following a request for review of that decision, the CPS Special Crime and Counter Terrorism division indicated on 4 September 2012 their agreement that Prince Nasser did not enjoy immunity under [section 20\(1\)\(b\)](#) of the 1978 Act, as his household was independent of that of the King of Bahrain. But they maintained the view that it was likely that he would enjoy functional immunity *ratione materiae* as Commander of the Royal Guard of Bahrain.

6 Further correspondence followed. On 2 October 2012, Deborah Walsh, Deputy Head of the Special Crime and Counter Terrorism division set out a full statement of reasons adhering to the earlier view that had been formed. Judicial review papers were lodged on 23 October 2012 seeking to challenge the CPS position as erroneous in law.

7 The claimant's case is very crisply summarised at paragraph 15 of the judicial review grounds as follows:

'1 [Section 1](#) of the 1978 Act does not apply to criminal proceedings.

2 Following the judgments of the House of Lords in *R v Bow Street Magistrate and Ors, ex parte Pinochet Ugarte (3)* [2001] 1 AC 147 , and [Jones v Ministry of the Interior of the Kingdom of Saudi Arabia and Anor \[2006\] UKHL 26, \[2007\] 1 AC 270](#) , it is clear that public officials of foreign states have no immunity from criminal process in relation to the international crime of torture based on immunity *ratione materiae*.

3 Prince Nasser bin Hamad does not have immunity *ratione personae* because the status of his current position does not attract immunity.'

8 It is said that Prince Nasser would be amenable to prosecution here pursuant to the extraterritorial criminal jurisdiction confirmed by [section 134 of the Criminal Justice Act 1988](#) which, it is submitted, was enacted to reflect the 'no safe haven' principle; see *Pinochet(3)* page 199, per Lord Browne Wilkinson. The ECCHR has filed grounds supporting the claim."

3 The case was at length fixed for hearing on 23 October 2013 but adjourned to enable service on the interested party which it was thought would take some time. Many interlocutory steps followed. Further directions were given, not least by Lord Justice Moses and Mr Justice King on 9 May 2014 in particular with a view to protecting the identity of the claimant and certain third parties. Their identity remains protected by order of the court. At length, after what seems to me a lamentable lapse of time, the case was re-listed for substantive hearing on today's date 7 October 2014. However on 15 September the claimant's solicitors wrote to the court indicating that a compromise was likely. On 29 September 2014 they wrote asking that the matter be taken out of the list. They were told that an application would have to be made. Such an application

was made on the claimant's behalf on 1 October 2014 and a directions hearing for today was sought instead. The application indicated in effect that it was proposed to settle the matter. There was an outstanding issue then relating to costs and no order was by that stage agreed but a Statement of Reasons was agreed and attached to the application.

4 Today, counsel on behalf of the claimant and the Director of Public Prosecutions have appeared before my Lord and myself and indicated that all matters have now been agreed and have produced a consent order. It attaches an amended statement of reasons:

“7 By letter dated 14 August 2014, the Crown Prosecution Service on behalf of the Director of Public Prosecutions informed the claimant's solicitors that it no longer maintained that the Prince could be entitled to functional immunity (immunity *ratione materiae*). This is because the United Kingdom and the Kingdom of Bahrain are parties to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, as held by the Court of Appeal, the ratio of Pinochet (3) dictates that as between the States party to this Convention the operation of functional immunity (immunity *ratione materiae*) is excluded.

8 The Crown Prosecution Service on behalf of the Director of Public Prosecutions also accepts that on the evidence before it Prince Al Khalifa would not benefit from personal immunity (immunity *ratione personae*).

9 The Crown Prosecution Service and Director of Public Prosecutions have accordingly accepted that consent to the issue of an arrest warrant under [Section 153 of the Police and Social Responsibility Act 2011](#) would not be denied solely on grounds of functional immunity (immunity *ratione materiae*) or personal immunity (immunity *ratione personae*) on the basis of the evidence filed in these proceedings.

10 Further, in the light of the claimant's intention to submit further evidence to the police (who are responsible for investigating the allegations), the Crown Prosecution Service has agreed to state to the police its view that immunity should not be a bar to any such investigation on the evidence currently available.

11 The Crown Prosecution Service continues to maintain that these proceedings are academic as it claims that the police decided not to conduct an investigation on the basis of the dossier of evidence submitted to it. The claimant by contrast maintains that the police position has been influenced by the position of the CPS that Prince Al Khalifa benefits from immunity, that circumstances have changed since the police decision including in respect of new evidence not yet provided to the police, and that the CPS's position would have precluded it from consenting to an arrest warrant in any event. This statement of reasons is without prejudice to these rival contentions which are relevant to the issue of costs and may be the subject of further submissions.”

5 I should add that the court has had a communication from the interested party, the European Centre for Constitutional and Human Rights, indicating that they do not propose to attend the hearing today. The court thinks it right to make the order sought with one amendment which we have raised with counsel and which, by their agreement, may form part of the consent order. The order will be as follows:

“It is hereby ordered by consent:

1 The decision of the defendant that, on the basis of evidence filed in these proceedings, Prince Nasser bin Hamad Al Khalifa of the Kingdom of Bahrain would or might be entitled to immunity is quashed.”

Paragraph 2 (I interpolate, this is the new paragraph), on the same basis it was declared that Prince Nasser is not entitled to immunity. What was paragraph 2 will become paragraph 3:

“The defendant agrees to pay the claimant's reasonable costs of the proceedings up to 5 February 2014 and reasonable additional costs of negotiations in relation to the order and statement of reasons.

3 There be a detailed assessment of the claimant's publicly funded costs in any event.”

6 The statement of reasons, part of which I have read into this judgment, should be attached to that order.

Mr Justice Cranston:

7 I agree.

8 LORD JUSTICE LAWS: (To counsel) Could you see that the order with the correct statement of reasons and the new paragraph 2 is drafted out and handed into the court.

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