



Trinity Term
[2010] UKSC 26
On appeal from: [2009] EWCA Civ 731

JUDGMENT

Secretary of State for the Home Department (Respondent) v AP (Appellant) (No. 2)

before

**Lord Phillips, President
Lord Saville
Lord Rodger
Lord Walker
Lord Brown
Lord Clarke
Sir John Dyson SCJ**

JUDGMENT GIVEN ON

23 June 2010

Heard on 5 May 2010

Appellant

Edward Fitzgerald QC
Kate Markus

(Instructed by Wilson
Solicitors LLP)

Respondent

Robin Tam QC
Tim Eicke
Rory Dunlop

(Instructed by Treasury
Solicitor)

LORD RODGER (with whom all members of the court agree)

1. On 16 June 2010 the Court gave judgment in *Secretary of State for the Home Department v AP* [2010] UKSC 24. As Lord Brown explained, the appeal concerned a control order imposed on AP under the Prevention of Terrorism Act 2005. In April 2008 the Secretary of State had modified the order to include a condition that AP, who had previously lived in London, should now live in a town some 150 miles away. In August 2008 Keith J quashed the residence requirement and the following day the Secretary of State served a modified control order in similar terms, except that the curfew had been reduced to 14 hours. By a majority, the Court of Appeal allowed the Secretary of State's appeal against Keith J's order. In its judgment of 16 June, this Court allowed AP's appeal and restored the order of Keith J quashing the residence requirement.

2. In fact, as Lord Brown also explained, the appeal was academic, so far as AP himself was concerned, since on 2 July 2009 the Secretary of State had revoked the control order and decided that AP should be deported on national security grounds. AP appealed to the Special Immigration and Asylum Commission (SIAC) against the decision to make the deportation order. On 20 July 2009 AP was granted bail pending deportation, on conditions, including residence in the Midlands, broadly similar to those of the previous control order, except that the curfew period is 18 hours.

3. It appears that an anonymity order was made at the outset of the proceedings in the Administrative Court and has been in force ever since. A similar anonymity order was made in AP's appeal to SIAC and it remains in force pending the Commission's decision.

4. At the outset of the hearing of AP's appeal to this Court, the Court made an order continuing the anonymity order for the duration of the hearing. The Court also invited submissions from AP and the Secretary of State as to whether the anonymity order should cover the publication of its judgment. No submissions were invited from the media and they did not seek to intervene to make submissions. In their submissions counsel for AP informed the Court that there had been press interest in the proceedings before SIAC and that a representative of a national newspaper had attended those proceedings to make submissions about the exclusion of the press and public from parts of the proceedings. It had not been suggested, however, that SIAC should reveal AP's identity in its judgment or that it should be open to the media to reveal his identity in any report of the proceedings or judgment.

5. In the present case the submissions for both AP and the Secretary of State favour the continuation of the anonymity order. That is by no means conclusive, however: on the contrary, the Court has borne in mind Sir Christopher Staughton's warning, in *R v Westminster City Council, Ex p P* (1998) 31 HLR 154, 163, that "when both sides agreed that information should be kept from the public, that was when the court had to be most vigilant."

6. In *In re Guardian News and Media Ltd* [2010] 2 WLR 325 an application was successfully made by various media to set aside anonymity orders in proceedings relating to orders freezing the assets of suspected terrorists. In that case counsel made some reference to anonymity orders in proceedings relating to control orders. While not making any ruling on control orders - none of which was before it - the Court observed, at p 348, para 78:

"Many of the same issues would obviously arise if an application were made to set aside the anonymity orders made in any outstanding control order proceedings. The same principles would also have to be applied, but there may be arguments and considerations in those cases which were not explored at the hearing in this case. Conceivably, also, the position might not be the same in all of the cases."

7. In *In re Guardian News and Media Ltd* the Court heard full submissions from both the media and the parties involved in the substantive proceedings. The Court reviewed the relevant authorities on the application of articles 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms. There is no call to repeat that exercise in the present case. Rather, so far as articles 8 and 10 are concerned, applying Lord Hoffmann's guidance in *Campbell v MGN Ltd* [2004] 2 AC 457, 473-474, paras 55 and 56, and the conclusions reached in *In re Guardian News and Media Ltd*, at pp 340-341, paras 50-52, the Court must ask itself "whether there is sufficient general, public interest in publishing a report of the proceedings which identifies [AP] to justify any resulting curtailment of his right and his family's right to respect for their private and family life." The Court emphasised that the answer will depend on the facts of the particular case. No issue under article 3 arose in that case.

8. In the present case both the Secretary of State and AP pointed out that, where proceedings are taken to challenge a control order, the person affected may well wish to argue that, for particular reasons, his identity should not be revealed. He may require time to muster the relevant information and evidence. It therefore makes sense for an interim anonymity order to be made at the *ex parte* permission stage. Reference was made to the observations of Ouseley J in *Times Newspapers*

Ltd v Secretary of State for the Home Department and AY [2008] EWHC 2455 (Admin) to that effect. I refer to those observations in para 11 below. The Court accepts that, at least as a general rule, an interim anonymity order will indeed be appropriate at that initial stage. It is important, however, that such an order should not just be continued automatically, but that the need for the order in the particular circumstances should be reviewed at the earliest suitable opportunity.

9. The submissions on behalf of the Secretary of State relied to a considerable extent on rather generalised assertions about the effect of setting aside an anonymity order: for example, it might result in harassment of the controlled person or his family, they might be threatened with violence, there might be disorder in the local community and friends and relatives might be reluctant to associate with the controlled person for fear of being identified with an extremist, publicity might prejudice any future prosecution. Experience with the freezing order cases suggests that, when the anonymity order is set aside, these hypothetical fears may well turn out to be exaggerated in the particular case. In line with the approach outlined in *In re Guardian News and Media Ltd*, the Court has therefore preferred to concentrate on the available information about the circumstances of this particular case.

10. The Secretary of State put forward an argument which did not arise in connexion with freezing orders. She pointed out that, when a control order is imposed, the police have to take steps to monitor and enforce the order, for instance, by visiting and searching the person's residence. Other officials, such as those involved in providing housing and in electronic monitoring, may also have to attend. The Secretary of State argues that an anonymity order allows the police and the other officials to carry out their duties without attracting significant attention or any possible hostility from the local community. In this way the officials can perform their duties more effectively.

11. It is not altogether easy to know just how much weight to attach in any given case to these somewhat general points. But the Court notes that, with his experience of the jurisdiction, in *Times Newspapers Ltd v Secretary of State for the Home Department and AY* [2008] EWHC 2455 (Admin) Ouseley J was prepared to give some weight to them, in the context of other general considerations. He said, at para 5:

“Such public identification may lead to harassment of and the risk of violence to the individual and his family by groups or individuals. The individual may continue to live where he was living already, and may remain in his job which could be put at risk. A media thirst for detailed and accurate news, in the public interest, may generate

persistent investigative reporting alongside highly intrusive watching and besetting. There may be a risk of disorder in any given local community. The knowledge that he is subject to a Control Order may conversely make him attractive to extremists in the area where he lives. It may make the provision of a range of services, including housing, to the individual or his family rather more difficult. If the individual believes that he faces these sorts of problems, he has a greater incentive to disappear, to live elsewhere in the UK or abroad. All of this can make monitoring and enforcement of the obligations more difficult, and increase significantly the call on the finite resources which the police or Security Service have to devote to monitoring the obligations. This all occurs in circumstances where the Secretary of State has been satisfied that serious criminal prosecution is not presently realistically possible, though not permanently excluded. There may therefore be an impact on other proceedings not yet underway.”

In his view, such considerations justified the making of an interim anonymity order at the application stage. In the absence of any competing view, the Court considers that some weight should indeed be given to the Secretary of State’s submissions that anonymity helps to make the administration of control orders more effective.

12. But the Court has been more influenced by the submissions of counsel for AP about the particular circumstances in this case. It would be counter-productive to go into the detail of the submissions which might serve to identify the town where AP is required to live.

13. In brief, counsel point out that the town where AP has to live is one where there are already considerable community tensions. There is organised racist activity in the town which has achieved not insignificant local support. There have been racist attacks, including physical violence, on members of the Muslim community in the town. There have also been attempts by racist groups to associate Muslims with terrorism.

14. Given these particular circumstances, the Court considers that there is force in AP’s submission that, if he were revealed to be someone who was formerly subject to a control order and is now subject to deportation proceedings for alleged matters relating to terrorism, then he would be at real risk not only of racist and other extremist abuse but of physical violence. In other words there is at least a risk that AP’s article 3 Convention rights would be infringed.

15. AP also makes the point that he has been forced to live in a town where he has no friends and no real social life. A difficult situation would be made very much worse if the anonymity order were lifted and he found that he was ostracised by members of his mosque and subjected to abuse by members of the public. Again, it is hard to assess the precise risk of this happening. But the Court has to weigh that risk in the context of the isolated situation in which AP finds himself due to the requirement that he should live in this particular town.

16. Finally, the Court has had regard to medical evidence to the effect that the bail conditions “represent a significant and constant challenge to [AP]’s psychological and emotional integrity”. Again, this is a matter which has to be taken into account when considering the impact on AP of setting aside the anonymity order.

17. The absence of any submissions on behalf of the media means that, unlike in *In re Guardian News and Media Ltd*, the Court is not aware of any special circumstances which might point to a particular public interest in publishing a report of the proceedings which identifies AP. On the other hand – and, again, unlike in the *Guardian News* case – for the reasons which it has given, the Court is unable to discount the risk that AP might indeed be subjected to violence if his identity were revealed. The Court also has regard to the potential impact on his private life.

18. For all these reasons, the Court has concluded that, in this particular case, the public interest, in publishing a full report of the proceedings and judgment which identifies AP, has to give way to the need to protect AP from the risk of violence. Similarly, in this particular case, that public interest would not justify curtailing AP’s right to respect for his private and family life. The anonymity order should accordingly be maintained and the Court’s judgment, and any reports of that judgment, should not reveal the appellant’s identity. He should continue to be referred to as “AP”.

19. The Court is conscious that it has reached this decision without hearing submissions from the media which might, conceivably, have cast a different light on the situation. Therefore, except in relation to interim orders at the application stage, the judgment should not be regarded as laying down any general rule as to the way that applications for anonymity orders should be determined in control order cases.