

Case No. CO/11360/2012

Neutral Citation Number: [2013] EWHC 2047 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Wednesday, 19 June 2013

B e f o r e:

LORD JUSTICE LAWS

MR JUSTICE WILKIE

Between:

THE QUEEN ON THE APPLICATION OF FF_

Claimant

v

DIRECTOR OF PUBLIC PROSECUTIONS_

Defendant

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(Official Shorthand Writers to the Court)

Miss D Rose QC and Mr T Hickman (instructed by Deighton Pierce Glynn) appeared on behalf of the **Claimant**

Mr G Verdirame (instructed by the Crown Prosecution Service) appeared on behalf of the **Defendant**

J U D G M E N T

1. **LORD JUSTICE LAWS:** This is, or has become, a directions hearing in the case of judicial review proceedings for which Foskett J granted permission on 28 January 2013. The claimant is a Bahraini citizen who was granted asylum in the United Kingdom.
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) [2000] 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.
9. On 28 January 2013, as I have said, Foskett J granted judicial review permission and made an order for the anonymity of the claimant and the confidentiality of the proceedings. He also ordered that the identity of Prince Nasser be not disclosed. He directed that the issue whether the State of Bahrain should be invited to participate as an interested party should be referred to Ouseley J as the judge in charge of the Administrative Court.
10. On 7 May 2013 Mr Justice Ouseley ordered the papers so far as they related to issues of immunity to be served on Prince Nasser and the State of Bahrain; and directed that any application to set aside his order be heard by a Divisional Court.
11. On 17 May 2013 the claimant issued an application to set aside Mr Justice Ouseley's order. However on 12 June 2013 the claimant's solicitors wrote to the court withdrawing that application. They accepted that the papers should be served on the Prince and on the State of Bahrain; but it is desired still to protect the anonymity of the claimant, and of another person, GG, who has submitted evidence in the proceedings. In addition, it is said that the latter's evidence should be served in redacted form.
12. The claimant has given reasons for seeking anonymity at paragraphs 13 to 16 of his witness statement. These claims for anonymity and redaction are not contested by the Director of Public Prosecutions. It is enough to say that it seems to me they are well justified. Counsel will agree the precise form of the redaction to the witness statement that is required.
13. It is also submitted -- and again, there is no contest between the parties before us today -- that is there now no reason to conceal the identity of Prince Nasser. Foskett J's order to that effect cannot any longer be justified given that the Prince is now to be served with the papers. The fact that serious allegations are involved is no reason for such confidentiality. I note what was said by Morgan J in Global Torch Limited v Apex Management Ltd [2013] EWHC 223 (Ch), paragraphs 44 to 53. Those observations support that view of the matter. Miss Rose tell us this morning that Morgan J's judgment has been upheld or approved in the Court of Appeal.
14. In principle, as it seems to me, it is perfectly right that Prince Nasser's identity should not be concealed. These are, or will become, public proceedings. There is no basis in law or proper practice for concealing the identity of the defendant on grounds only that serious allegations are involved or that he enjoys a high position in a foreign State. I would accordingly discharge Foskett J's order protecting Prince Nasser's identity.

15. As I have said in short remarks in open court, Miss Rose however accepts on behalf of the claimant that that order (although it is the order she certainly supports) should be suspended for 14 days to give Prince Nasser an opportunity to make an application for a different outcome. That provision will appear in paragraph 5 of the order of this court as drafted by counsel. It seems to me right that that should be done, and that is of course the reason why it has been necessary to give this judgment in camera.
16. I do not think it is necessary for me to say any more. There will be questions as to how Prince Nasser and the State of Bahrain are to be served, I suppose, but that I think is not this court's problem, at least not today.
17. **MR JUSTICE WILKIE:** I agree for the reasons given by my Lord Lord Justice Laws that the order should be made in the form of the draft before the court.