



Press Summary

26 January 2022

Pwr (Appellant) v Director of Public Prosecutions (Respondent)
Akdogan and another (Appellants) v Director of Public Prosecutions
(Respondent)
[2022] UKSC 2
On appeal from [2020] EWHC 798 (Admin)

Justices: Lord Lloyd-Jones, Lady Arden, Lord Hamblen, Lord Burrows, Lady Rose

Background to the Appeal

Section 13(1) of the Terrorism Act 2000 (“**the 2000 Act**”) provides that it is a criminal offence for a person in a public place to carry or display an article “in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation”.

The appellants took part in a demonstration against the perceived actions of the Turkish state in north-eastern Syria. Each carried a flag of the Kurdistan Workers Party (“**the PKK**”), an organisation which is proscribed under the 2000 Act. The appellants were each convicted in Westminster Magistrates’ Court of a section 13(1) offence. The Crown Court dismissed their appeals, holding that section 13(1) created an offence of strict liability meaning that the offence did not require a person to have any knowledge of the import of the article that he or she was wearing, carrying or displaying, or of its capacity to arouse reasonable suspicion that he or she was a member or supporter of a proscribed organisation. The Crown Court also held that section 13(1) was not incompatible with the right to freedom of expression under article 10 of the European Convention on Human Rights (“**the Convention**”).

Two issues arise on this appeal. First, whether section 13(1) creates an offence of strict liability. Second, if it does, whether it is incompatible with article 10 of the Convention.

Judgment

The Supreme Court unanimously dismisses the appeal. Lady Arden, Lord Hamblen and Lord Burrows deliver a joint judgment, with which Lord Lloyd-Jones and Lady Rose agree.

Reasons for the Judgment

Strict liability

Section 13(1) is a strict liability offence. A limited mental element is required under section 13(1) in that the defendant must know that he or she is wearing or carrying or displaying the relevant article [26]. However, there is no extra mental element required over and above this [58].

There is a strong presumption that criminal offences require mens rea [27]-[33]. In this case, the presumption is rebutted by necessary implication [34]-[35]. First, the words arousing “reasonable suspicion” impose an objective standard and indicate that there is no requirement of mens rea [36]-[41]. Second, to interpret section 13(1) as requiring mens rea would render incoherent what can otherwise be viewed as a calibrated and rational scheme of proscribed organisation offences in the 2000 Act [42]-[53]. Third, a strict liability interpretation of the offence in section 13(1) is supported by the purpose (or mischief or policy) behind the offence, which is concerned with the effect on other people rather than the intention or knowledge of the defendant [54]-[56].

Compatibility with article 10 of the Convention

The offence under section 13(1) is compatible with article 10. Section 13 is an interference for the purposes of article 10(1) [60]. However, that interference is justified [77]. First, the restriction is prescribed by law, in that section 13(1) is expressed in clear terms which provide legal certainty [63]. Second, the restriction pursues legitimate aims, in that it is necessary in the interests of national security, public safety, the prevention of disorder and crime and the protection of the rights of others [64]. Third, the restriction is necessary in a democratic society and proportionate to the legitimate aims pursued. Even taking into account the European Court of Human Rights’ (“ECtHR”) jurisprudence that, under article 10, necessity is not to be lightly found, section 13 strikes a fair balance between the right to freedom of expression and the need to protect society by preventing terrorism. In particular, the offence is circumscribed by the requirement for reasonable suspicion and the sanctions are comparatively minor [68]. The Supreme Court rejects the appellants’ submission that the ECtHR considers that expressive acts can only be criminalised where the expression includes an incitement to violence [73]-[77].

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: [Decided cases - The Supreme Court](#)