



## Press Summary

28 June 2023

### **R (on the application of Marouf) (Appellant) v Secretary of State for the Home Department (Respondent)**

**[2023] UKSC 23**

***On appeal from: [2021] EWCA Civ 348***

**Justices:** Lord Reed (President), Lord Hodge (Deputy President), Lord Burrows, Lady Rose, Lord Richards

#### **Background to the Appeal**

The public sector equality duty (“**PSED**”) imposed by section 149 of the Equality Act 2010 is a procedural obligation that requires public bodies to have due regard to the equality needs listed in that section when exercising their functions. This appeal concerns the territorial scope of the PSED. It raises the issue of whether a public body is required under the PSED to have due regard to people living outside the United Kingdom when exercising its functions.

The Appellant is a Palestinian refugee currently living in Lebanon, having fled the conflict in Syria. She asserts that she should be treated as eligible to come to the United Kingdom under the Vulnerable Persons Resettlement Scheme (“**the Resettlement Scheme**”) instituted by the Government in 2014. However, the Resettlement Scheme applied only to refugees referred by the United Nations High Commissioner for Refugees (“**UNHCR**”). The Appellant is outside the remit of the UNHCR because she is registered with the United Nations Relief and Works Agency (“**UNRWA**”). Whereas UNHCR has a specific mandate to assist refugees by local integration in the country where they are living, or by resettlement in a third country, UNRWA has no such mandate. It follows that in practice, Palestinian refugees cannot take part in the Resettlement Scheme.

The Appellant brought judicial review proceedings challenging the lawfulness of the Secretary of State’s adoption and operation of the Resettlement Scheme. The ground of challenge directly relevant to this appeal was that the Secretary of State had failed to comply with the PSED because she did not have due regard to the equality needs set out in that section.

The High Court held that the PSED did have extraterritorial effect. On appeal, the Court of Appeal disagreed and held that it did not. The Appellant now appeals to the Supreme Court.

## Judgment

The Supreme Court unanimously dismisses the appeal. Lady Rose gives the judgment, with which Lord Reed, Lord Hodge, Lord Burrows and Lord Richards agree.

### Reasons for the Judgment

#### *The presumption against the extraterritorial effect of legislation*

The starting point for consideration of the scope of the enactment is the presumption in domestic law that legislation is not intended to have extraterritorial effect [36]. This well-established principle has been applied for very many years to many enactments. In the absence of express words, the extraterritorial application of legislation may be implied but there is a high threshold to overcome before any such implication [41].

#### *The extraterritorial effect of section 149 as a whole*

The Appellant's primary case was that the whole of section 149 has extraterritorial effect [9]. She relies particularly on section 149(1)(b), arguing that the Secretary of State had failed to have due regard to the need to advance equality of opportunity for persons who share a relevant protected characteristic (in this case being a Palestinian refugee) as compared with persons who do not share it (in this case, other refugees) [3].

The Supreme Court holds that there is nothing in the legislation from which one can imply that the presumption against extraterritoriality has been overridden. On the contrary, the scope of the equality goals which public authorities should aspire to achieve suggests there is no such intention. The PSED is intended to ensure that specified public bodies have due regard to the need to adopt policies which help to bring about societal change that would see the elimination of discrimination and promotion of equality of opportunity and good relations between different groups within the community. There is no duty on public bodies under section 149 to attempt to bring about that kind of change in countries outside the United Kingdom. It is not open to a person with a protected characteristic but no connection to the United Kingdom to rely on the PSED to challenge a decision of a public body on the grounds that a policy adopted failed to have due regard to the need to improve their position within that overseas community [54], [56].

#### *Extraterritorial effect of section 149(1)(a) co-extensive with a breach of section 29(6) of the Equality Act 2010*

The Appellant's alternative case was that the specific procedural duty under section 149(1)(a) to have due regard to the need to avoid unlawful discrimination has extraterritorial effect. The Appellant relies on the Court of Appeal's decision that the substantive prohibition on unlawful discrimination, under section 29(6), has extraterritorial effect to a limited extent [9] (although the Court of Appeal held there had been no unlawful discrimination in this case). The substantive provision applies to individual Palestinian refugees at the point when they are prevented from proceeding to the next stage of being considered for resettlement under the Resettlement Scheme [61]. Thus, the Appellant argues that the territorial scope of the procedural duty must be as wide as the relevant substantive provisions that set out the duty not to discriminate [58].

The Supreme Court holds that the procedural duty to have due regard to the need to avoid unlawful discrimination under section 149(1)(a) is not engaged. The PSED is primarily directed at policy decisions not at the application of policy to individual cases [62]. The Appellant's

argument would confer rights on people all over the world to challenge the decision-making process of a public body exercising its functions, if the exercise of the public body's functions affected them [64]. Given the very serious implications of that construction for public bodies, if Parliament wanted extraterritorial effect to apply to part of section 149(1) but not to the other parts, it would have made this express in the legislation [66].

*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](#)**