5 February 2014

PRESS SUMMARY

Richardson and another v Director of Public Prosecutions [2014] UKSC 8 ***On appeal from*** *[2012] EWHC 1238 (Admin)*

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Hughes, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEALS

Ahava was a shop in Covent Garden, London, which mainly sold beauty products processed from Dead Sea mineral materials. The products were factory-produced by an Israeli company, in an Israeli settlement located in the West Bank and therefore within the Occupied Palestinian Territory ("**OPT**"). It was said that the factory was staffed by Israeli citizens encouraged by the Government of Israel to settle there.

Mr Richardson and Ms Wilkinson ("the Defendants") sought to disrupt the activities of Ahava. On 2 October 2010 they entered the shop (together with other helpers) carrying a concrete tube. They connected their arms through the tube anchored by a chain, secured by a padlock to which they claimed to have no key. They were asked to leave the shop by an Ahava employee, but failed to do so. The employee called the police and, after some time, closed the shop.

Tools were used to release the Defendants from the tube. On their release, they were arrested for aggravated trespass contrary to s. 68 Criminal Justice and Public Order Act 1994 ("**the 1994 Act**"). That offence criminalises the conduct of a person A who (i) trespasses on land, (ii) where there is a person or persons B lawfully on the land who is engaged in or about to engage in a lawful activity, (iii) and A does an act on the land, (iv) intended by A to intimidate all or some Bs from engaging in that activity, or to obstruct or disrupt that activity.

In the magistrates' court, the Defendants contested the charge on point (ii). They argued that Ahava's activities were not 'lawful' since they involved the commission of one or more of four criminal offences.

- Firstly, they said that Ahava was guilty of aiding and abetting the transfer by Israeli authorities of Israeli citizens to the OPT, a territory under belligerent occupation. This was argued to be contrary to Article 49 of the Fourth Geneva Convention 1949, which constituted a war crime. Ahava's actions in aiding and abetting the transfer, if true, would constitute an offence under ss. 51-52 of the International Criminal Court Act 2001 ("**the war crimes offence**").
- Secondly, they said that since Ahava was aiding and abetting a war crime, Ahava must know or suspect that the products sold in the shop were the products of that offence. Ahava was therefore, they argued, guilty of the offence of using or possessing criminal property ("**the criminal property offence**").
- Thirdly, they argued that the products had been imported into the UK purportedly under the EC-Israeli Association Agreement, which conferred tax or excise advantages. However, since the Court of Justice of the European Union has ruled that products originating in the OPT do not fall under this Agreement, they asserted that Ahava was guilty of the offence of cheating the revenue ("**the revenue offence**").
- Fourthly, they emphasised that the products sold were labelled "*Made by Dead Sea Laboratories Ltd, Dead Sea, Israel*". The OPT is not recognised as part of Israel. Therefore, they argued, Ahava was guilty of labelling offences under the Consumer Protection from Unfair Trading Regulations 2008 and the Cosmetic Products (Safety) Regulations 2008 ("**the labelling offences**").

The district judge in the magistrates' court convicted the Defendants. They appealed, on the grounds above, to the Divisional Court. The Divisional Court upheld the conviction, but certified as a matter of general public importance the question whether the words 'lawful activity' in s. 68 of the 1994 Act should be limited to acts or events "integral" to the activities at the premises in question.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. An activity is 'unlawful' for the purposes of s. 68 only if it involves a criminal offence integral to the core activity carried on, not when any criminality is only incidental, collateral to, or remote from the activity. Applying that to the facts of this case, none of the offences alleged by the Defendants are integral to Ahava's activities. The judgment of the Court is given by Lord Hughes.

REASONS FOR THE JUDGMENT

The effect of s. 68 of the 1994 Act is to add the sanction of the criminal law to particular acts which already constitute the civil wrong of trespass. It is not specifically aimed at individuals wishing to protest, and is to be construed in accordance with the normal rules of statutes creating criminal offences **[2-4]**. In order to argue that an activity is not 'lawful', the Defendant has to show a specific criminal offence against the law of England and Wales, which is properly raised on the evidence before the court. Once that evidential burden has been satisfied, the burden of proof lies on the Crown to disprove that offence to the criminal standard **[9]**.

The Defendants had accepted that a 'merely collateral' offence would not suffice to prove the defence. They argued that the 'activity' could be defined as the particular feature of B's acts against which A was protesting or objecting: if that particular feature was unlawful, this would suffice for s. 68. This, however, turns the section upside down. To apply the section, it is necessary *first* to consider what B's lawful activity is, and then to ask whether that is the activity which A intends to disrupt. The Defendants' argument involves considering A's motive, rather than A's intent: A *intends* to disrupt the whole activity **[12]**.

The true purpose of s. 68 is to add the sanction of the criminal law to a trespass where A disrupts an activity that B is entitled to pursue. The 'no lawful activity' defence must therefore apply when the criminal offence is integral to the core activity carried on, not merely incidental or collateral to that activity **[13]**. However, if a criminal offence integral to the core activity is raised, the court must consider that question even if it involves assessing extraneous facts, or the conduct of third parties **[14-15]**.

Applying those principles to this case, none of the offences raised by the Defendants are made out.

- The **war crimes offence**: The only evidence raised by the Defendants was that a different company (the manufacturing company) had employed Israeli citizens at a West Bank factory and that the local community, which held a minority shareholding in that manufacturing company, had advertised the settlement to prospective settlers. It is very doubtful that the manufacturing company's actions could amount to aiding and abetting the transfer of Israeli citizens to the OPT, but even if it did, this could not amount to an offence by Ahava's retailing arm. Moreover, any such assistance is not an integral part of the activity carried out by Ahava, which was retail selling **[17]**.
- The **criminal property offence**: If, for the reasons above, there is no aiding and abetting of any unlawful movement of population, the products cannot be the products of a criminal offence. In any event, the criminal property offence cannot be said to be integral to the activity of selling **[18]**.
- The **revenue offence**: This is a purely collateral offence. Even if proven, the importer is only liable to repay to the Revenue duty which should have been paid **[19]**.
- The **labelling offences**: These are the principal offences relied on. The first Regulation criminalises misleading commercial practices, including labelling. However, it is necessary to show that, as a result of the misleading labelling, the average consumer would buy something that he/she otherwise would not have done. In this case the district judge had found that a consumer willing to buy Israeli products would be very unlikely not to buy Israeli products because they were produced in the OPT. Therefore, the offence could not have been committed **[20-22]**. The second Regulation criminalises the supply of cosmetic products which do not state (among other things) the country of origin. The aim of this is clearly to protect consumers, and stating that the products derive from the Dead Sea is sufficient: the Regulation is not aimed to reflect disputed questions of territoriality. Even if an offence had been shown, it would not have been integral to the sale activity **[23]**.

References in square brackets are to paragraphs in the judgment