



16 July 2014

PRESS SUMMARY

R (on the application of Sandiford) (Appellant) v The Secretary of State for Foreign and Commonwealth Affairs (Respondent) [2014] UKSC 44
On appeal from [2013] EWCA Civ 581

JUSTICES: Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath and Lord Toulson

BACKGROUND TO THE APPEALS

Mrs Sandiford is a 57 year old British national. She is currently in prison in Bali, Indonesia, awaiting execution by firing squad following her conviction for drug offences. The issue in this appeal is the legality of the Foreign Secretary's policy of providing consular assistance in such cases, but not funding for legal representation.

Following her arrest in May 2012 she had co-operated with the police, leading to the arrest and conviction of four others. At her trial she admitted the offences but claimed that she had been coerced by death threats to her son. Following her conviction and sentence in December 2012, she sought financial assistance from the UK government to pay for legal representation to prepare and present her appeal to the High Court in Indonesia. The consulate put her in touch with an experienced local lawyer, who was willing to assist on an expenses only basis. However, they declined to make any financial contribution to her legal costs, relying on their published policy, under which the government was willing to provide consular support and assistance in finding suitable local lawyers, but not to pay for legal representation.

She commenced the present proceedings for judicial review challenging the legality of that policy, both on article 6 of the European Convention on Human Rights and the common law. Her claim was rejected by the Divisional Court on 31 January 2013 and her appeal to the Court of Appeal was dismissed on 22 May 2013.

In the meantime, the necessary sum for the expenses of her lawyer in Indonesia was raised by donations from the public. Her High Court appeal in Indonesia proceeded with his assistance, and was also supported by an amicus brief by the UK government, but was unsuccessful. She appealed to the Indonesian Supreme Court, again with legal assistance funded by donations, but her appeal was dismissed in August 2013.

She now requires a substantial sum to pay for the legal assistance to prepare and present an application to the Indonesian Supreme Court to reopen the case and a clemency petition to the President of Indonesia. The papers require to be lodged by 29 August 2014.

The issue in this case is the legality of the government's "blanket" policy to refuse to pay for legal representation in such cases, and their decision in January 2013 to refuse to make an exception to that policy in her own case. Her claim having failed in the High Court and Court of Appeal, Mrs Sandiford now appeals to the UK Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. However, in the light of new information (not available to the lower courts) as to the course of the proceedings in Indonesia and the steps now available to her there, the court calls on the Secretary of State urgently to review the application of the policy to Mrs Sandiford's case in the light of that information.

Lord Carnwath and Lord Mance give a joint judgment, with which Lord Clarke and Lord Toulson agree. Lord Sumption gives a concurring judgment.

REASONS FOR THE JUDGMENT

Mrs Sandiford is not within the jurisdiction of the UK for the purposes of article 1 of the European Convention on Human Rights. Jurisdiction under article 1 is primarily territorial, but there are certain recognised exceptions. One exception is in relation to the acts of diplomatic and consular agents which may amount to an exercise of jurisdiction when the agents exert authority and control over others [19].

In this case, it is not possible to identify any relevant acts of diplomatic or consular agents or any relevant exercise of authority or control by such agents over Mrs Sandiford which could bring the exception into play. Refusal to instruct or fund lawyers on behalf of Mrs Sandiford cannot constitute an exercise of authority or control over her [26].

Mrs Sandiford has been apprehended, convicted and tried for drug smuggling in Indonesia, and is under the authority and control of the Indonesian authorities. It is they who have responsibility for ensuring her fair trial. [32].

Under domestic law, the Secretary of State has power to provide assistance, including legal funding, for British citizens facing capital charges abroad. This power is not derived from statute [49]. Prerogative powers have to be approached on a different basis from statutory powers. There is no necessary implication that a blanket policy is inappropriate, or that there must always be room for exceptions, when a policy is formulated for the exercise of a prerogative power [62].

In any event, on the evidence, the Foreign Office was prepared to consider whether the policy should be modified in the face of the particular circumstances of Mrs Sandiford's case [67]. The department responded with urgency to Mrs Sandiford's unexpected death sentence, and put Mrs Sandiford in contact with an experienced local lawyer who was willing to conduct the appeal on an expenses-only basis. Their reasons for not making an exception to their no-funding policy were not irrational. The problem at the appeal was not lack of competent representation but the apparent unwillingness of the court to take any notice of it [72]. The challenge to the decision to refuse funding and to the policy on which it was based therefore fails [73].

Although that disposes of the appeal, Mrs Sandiford remains in jeopardy and urgently in need of legal help. Circumstances have radically developed in unforeseen ways. The evidence now available as to the Indonesian proceedings appear to raise the most serious issues as to the functioning of the local judicial system and its ability to deal with Mrs Sandiford's case. The local courts seem to have ignored the substantial mitigating factors in her case, including her age and mental problems, her lack of any previous record, her co-operation with the police and the disparity of her sentence with those of the others convicted. This calls for an urgent review of the policy as it applies to Mrs Sandiford in light of the current information [74-75].

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:

www.supremecourt.gov.uk/decided-cases/index.html