



14 October 2015

## PRESS SUMMARY

### **Shahid (Appellant) v Scottish Ministers (Respondent) (Scotland) [2015] UKSC 58** *On appeal from [2014] CSIH 18A*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Sumption, Lord Reed, Lord Hodge

#### **BACKGROUND TO THE APPEAL**

In 2006 the appellant and his two co-accused were convicted of the racially-aggravated abduction and murder of a 15 year old boy. Upon being remanded in custody, from 7 October 2005 the appellant was removed from association with other prisoners and placed in solitary confinement (segregation). It was considered that the appellant and his co-accused were liable to attack by other prisoners, and there were persistent fears for their safety if accommodated in mainstream conditions. Apart from a period immediately prior to and during his trial, the appellant remained in continuous segregation until 13 August 2010. Altogether he spent 56 months in segregation.

The appellant was segregated pursuant to the Prisons and Young Offenders Institution (Scotland) Rules 1994 and the subsequent Prisons and Young Offenders Institution (Scotland) Rules 2006, the relevant provisions of which are identical. Rule 94 of the 2006 Rules permit a Governor to authorise segregation for up to 72 hours for the purpose of “maintaining good order or discipline”, “protecting the interests of any prisoner”, or “ensuring the safety of other persons”. Segregation beyond 72 hours for a further month must be authorised by the Scottish Ministers, “prior to the expiry of the said period of 72 hours”, on the application of a Governor. The Scottish Ministers may renew the authority for further monthly periods, again on the application of a Governor.

The appellant sought orders declaring that certain periods of his segregation were in breach of the relevant Prison Rules, and that his segregation violated article 3 of the European Convention on Human Rights, the prohibition against torture, inhuman and degrading treatment, and article 8, the right to respect for private life. His judicial review challenging the lawfulness of his segregation was refused by both the Outer House and the Inner House of the Court of Session.

#### **JUDGMENT**

The Supreme Court unanimously allows the appeal, granting a declarator (1) that the appellant was segregated unlawfully during three separate periods totalling 14 months; and (2) that his article 8 rights were violated. Lord Reed gives the only judgment with which Lord Neuberger, Lady Hale, Lord Sumption and Lord Hodge agree.

#### **REASONS FOR THE JUDGMENT**

There are three issues in the appeal: (1) whether the authorities’ admitted failure to comply with the time limits imposed by the Prison Rules invalidated the continued segregation; (2) whether the appellant’s segregation breached article 3 of the Convention; and (3) whether his segregation violated article 8.

On the first issue, rule 94(5) means that segregation should not continue beyond the initial 72 hours unless the Ministers' authority has been granted before the 72 hours have expired [15]. Rule 94(6) makes it clear that the Ministers' authority takes effect from the expiry of the 72 hour period [16]. A late authority by the Ministers, granted after the expiry of the 72 hour period, cannot have effect [17]. This is consistent with the purpose of the legislation: to provide a safeguard for the protection of the prisoner, by ensuring that the need for segregation is reviewed within a short time by officials external to the prison and that segregation is maintained only for so long as is necessary [18]. On the three occasions when authority for the appellant's segregation was granted late, that authority was invalid, and incapable of renewal. Consequently, the appellant's segregation for periods totalling about 14 months lacked authorisation under the Prison Rules [28]. It is however accepted that the appellant was not prejudiced as a result [29].

On the second issue, the conditions of segregation and the measures imposed were not in themselves in breach of article 3 [32-33]. The appellant was placed in segregation in the interests of his own safety, and there was a genuine and reasonable concern that he was at risk of serious injury or worse [34]. The appellant did not suffer any severe or permanent injury to his health. The isolation he experienced was partial and relative. Whilst the duration of his segregation was undesirable, and the conditions could have been improved, the appellant's segregation did not attain the minimum level of severity required for a violation of article 3 [36-37].

On the third issue, the Ministers accepted that segregation is an interference with the right to respect for private life under article 8(1). It must therefore pursue a legitimate aim, be in accordance with the law, and be a proportionate means of achieving the aim pursued [39]. The segregation pursued a legitimate aim, namely the protection of the appellant's safety [40]. However, during the periods in which the appellant was segregated without valid authorisation under the Prison Rules, his segregation was not in accordance with the law [41]. Additionally, some of the decisions taken by Governors to segregate the appellant or to apply for Ministers' authorisation for his continued segregation were not taken in the exercise of their own independent judgment. Instead, they proceeded on the basis that the decision had already been made by the Executive Committee for the Management of Difficult Prisoners ("ECMDP"), a body which was not entrusted with the power to make such a decision. This invalidated subsequent decision-making by the Ministers, as their power of decision was predicated on a valid application being made to them. This breach of domestic law also results in a violation of article 8, although it does not appear to have prejudiced the appellant, as when Governors did carry out an independent assessment, they reached the conclusion that segregation was necessary to protect the appellant's safety [66-73].

In relation to proportionality, the seriousness of the risk of harm required to justify segregation becomes greater as time goes by, and increased scrutiny will be applied as to whether segregation is the only means of addressing the risk [76]. Other potential accommodation options, providing reduced association and greater supervision for prisoners who remain at risk of harm, were not available in Scotland during the period in question. No consideration was given to the possibility of transferring the appellant to a prison elsewhere in the UK. No meaningful plan was put in place until the appellant had been in segregation for 55 months. Accordingly, the Scottish Ministers have failed to establish that the appellant's segregation for the entire period was proportionate [83-86].

In the circumstances, just satisfaction can be afforded by making a declaratory order [89].

*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:**

<http://supremecourt.uk/decided-cases/index.shtml>