

Judicial Communications Office

8 December 2017

COURT GRANTS LEAVE TO CHALLENGE TERRORISM TRAVEL NOTIFICATION REQUIREMENTS

Summary of Judgment

The Divisional Court, sitting today in Belfast, granted leave to challenge the Counter-Terrorism Foreign Travel Notifications.

Anthony John McDonnell (“the applicant”) is an Irish citizen resident in Northern Ireland. On 4 December 2013 he was convicted of five counts of the possession of car registration numbers of police officers, contrary to s.58(1)(b) of the Terrorism Act 2000. A determinate custodial sentence (DCS) of three years and six months was imposed, of which one year and nine months was to be served in custody, and one year and nine months on licence, subject to conditions imposed on his release.

By virtue of that conviction, the applicant became subject to notification requirements pursuant to Part 4 of the 2008 Act and regulations 3 and 4 of the Counter Terrorism Act (Foreign Travel Notification Requirements) Regulations (2009). He is subject to such requirements until 2023.

The notification requirements are an automatic requirement for persons aged 16 or over when they are convicted of certain terrorism offences or offences with terrorist connection, and are given a ‘relevant’ sentence. The requirements are not dependent on an order of the Court, and neither the Court nor the police have a discretion imposing them. Similarly the period the convicted person is subject to the requirements as set out in the 2008 Act, and again there is no discretion vested in the Court or the police as to the length of time during which the notification is to be made. The requirements as they relate to the applicant are that:

- He must give notice to the police seven days in advance of any proposed trip out of the United Kingdom for a period of three days or more.
- He must give notice of his return within three days to the police.
- The above notices must be made in person at a police station within his local policing area.

Failure to comply is a criminal offence. The applicant, for family contact reasons, visits the Republic of Ireland. These trips appear to have been undertaken without any problem for some considerable time, but in June 2017 there was difficulty in the police recording his return. The applicant seeks inter alia a declaration that the automatic imposition of foreign travel notification requirements is unlawful as it is

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contrary to his right of free movement within the EU, and the continuing imposition of such requirements is unlawful absent an individual assessment of his circumstances by the State which establishes that he constitutes a genuine, present and sufficiently serious threat to society.

By the imposition of a DCS, the court determined that the applicant was not, at the date of sentencing, 'dangerous', namely that he was not considered a significant risk to members of the public of serious harm by the commission by him of further specified offences (including offences under the Terrorism Act 2000). He was released on licence on 2 October 2014 subject to a series of conditions including to permanently reside at an address approved by his probation officer; not to travel outside the United Kingdom without the prior permission of his probation officer; not to behave in a way that would undermine the purposes of release on licence, which are the protection of the public, the prevention of reoffending and the rehabilitation of the offender; and if he poses a risk of harm to the protection of the public he could be recalled. The licence provided for its expiry on the 3 July 2016.

The applicant was not recalled to prison during his licence term, and there is no evidence before the court as to any failure on his part to comply with his licence conditions, or that he behaved in any way which posed a risk of harm to the protection of the public. It was accepted that no assessment was carried out as to the risk, if any, which he poses to the public, neither in respect of issues of terrorism, or at all. It was also accepted that since his release he has complied with all conditions imposed on him in respect of the notification requirements.

The Divisional Court said that the applicant's right of freedom of movement is not absolute but subject to restrictions when the Member State seeks to show measures are required on grounds of public policy or public security. If so established, such restrictions are required to be proportionate and not contrary to the Charter. The applicant submitted that there must not be a blanket approach to a particular individual, but rather that there must be a case by case assessment in which all relevant circumstances must be considered, and that the threat must be genuine, real and current. It was also argued that there should have been a reassessment during the statutory period of the restrictions, in the case of this applicant, during a period of 10 years. During custody the restrictions did not apply, and during the applicant's licence period the restrictions imposed by his licence conditions ran in parallel with the notification restrictions, in that not only was he required to comply with those restrictions, he required the permission of the probation officer to leave the jurisdiction - and he would have had to give details of any trip, and his return. The applicant argued, however, that the restrictions are a continuing breach of his freedom of movement, and that if the provisions are unlawful then the lapse of time cannot vest the provisions with legitimacy.

The Divisional Court said it was satisfied that leave should be granted against the Home Secretary on the ground that the requirement for notification is unlawful

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without any assessment or reassessment of any offender as representing a genuine and real current risk.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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