



THE COURT ORDERED that (1) no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or of any member of his family in connection with these proceedings and (2) there be liberty to apply.

9 July 2021

PRESS SUMMARY

R (on the application of AB) (Appellant) v Secretary of State for Justice (Respondent)
[2021] UKSC 28
On appeal from [2019] EWCA Civ 9

JUSTICES: Lord Reed (President), Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens

BACKGROUND TO THE APPEAL

On 10 December 2016, the appellant, AB, pleaded guilty to offences of indecent exposure and sexual assault, and was remanded in custody at Feltham Young Offenders’ Institution (“**Feltham**”). AB was, at that time, fifteen years old.

Between 10 December 2016 and 2 February 2017, AB was placed on “single unlock” at Feltham, meaning that he could not leave his cell when any other detainees were out of their cells, apart from some time in “three-officer unlock”, which involved three officers being present whenever he left his cell. He was placed on this regime initially for the protection of officers, and later for his own safety. He received no education or training during this period. He was given a gym induction but was not provided with access to the gym. He had limited forms of social contact, including occasional table tennis matches with an officer. He was visited by the chaplain, mental health professionals and social workers. He had no contact with other detainees.

On 16 February 2017, AB issued a claim for judicial review against the respondent, the Secretary of State for Justice (“**the Secretary of State**”). His claim was successful in part. The High Court decided that the Secretary of State had failed to comply with the Young Offender Institution Rules 2000 and had breached article 8 of the European Convention on Human Rights (“**the Convention**”). The High Court did not accept, however, that between 10 December 2016 and 2 February 2017 AB had suffered inhuman and degrading treatment in breach of article 3 of the Convention. AB appealed against that latter part of the decision to the Court of Appeal. His appeal was dismissed.

AB now appeals to the Supreme Court. Two arguments are made on his behalf: first, that the solitary confinement of any person under 18 automatically violates article 3 of the Convention; or, alternatively, that such treatment can only be regarded as compatible with article 3 of the Convention if there are exceptional circumstances which render the treatment strictly necessary.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Reed gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

When questions arise in connection with Convention rights, section 2(1) of the Human Rights Act requires domestic courts to take into account relevant judgments and decisions of the European Court of Human Rights (“**the European Court**”) [39]. Where there is a clear and consistent line of relevant case law of the European Court, the domestic courts should follow it unless there are exceptional circumstances which justify a different approach [54], [58]. That does not mean, however, that the domestic courts can or should substantially develop the European Court’s case law [54], [59]. Parliament’s purpose in enacting the Human Rights Act was to ensure that there is correspondence between the rights enforced domestically and those available before the European Court, not to provide for rights which are more generous than those available before the European Court [55].

On that basis, in determining this appeal, the Supreme Court’s starting point is the existing case law of the European Court [39]. From that case law, a consistent approach to the application of article 3 of the Convention can be discerned. In cases concerned with allegations of ill-treatment – including those concerned with the solitary confinement of adult prisoners and with the ill-treatment of detained children and young people – the European Court asks itself whether the ill-treatment has attained the minimum level of severity which is necessary for article 3 to apply. The minimum level is not fixed, but depends on “all the circumstances of the case”. A range of matters are relevant, including the age of the applicant and the duration, purpose and effect of the treatment [40]-[52].

The European Court has not adopted any bright line rule that the solitary confinement of a person under 18 is automatically a violation of article 3 of the ECHR. It is not open to the Supreme Court to depart from the European Court’s case law by creating such a rule itself [53]-[60]. Contrary to the argument made on behalf of AB, a different approach is not required or justified in the light of certain General Comments issued by the UN Committee on the Rights of the Child, which state that the solitary confinement of persons under 18 should be prohibited in all circumstances [60]. Those Comments are not binding even in respect of the meaning of the UN Convention on the Rights of the Child, and would not be treated by the European Court as determinative of the question of whether any particular provision of the Convention has been breached [61]-[67].

The European Court has also not adopted any rule that the solitary confinement of a person under 18 will be compatible with article 3 of the Convention only if there are “exceptional circumstances” which make such treatment “strictly necessary” [75]-[76]. The European Court might adopt a “strict necessity” test in this context in the future, but it has not done so yet. It is not the function of the Supreme Court to anticipate such a significant development in the application of the Convention [77].

The Supreme Court accordingly rejects both legal arguments made on behalf of AB [78]. The Court decides that it would not be appropriate to go on to consider whether, in all the circumstances of the case, the treatment of AB was compatible with article 3 of the Convention, as the Equality and Human Rights Commission invited the Court to do. To do so would be to commit the very error that AB accuses the lower courts of falling into. It would also be unfair to the Secretary of State, and would undermine the Court’s procedural rules, if the Court were to determine the appeal otherwise than on the basis of the two narrow arguments made on behalf of AB [3].

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.html>