

CO/687/2007

Neutral Citation Number: [2007] EWHC 2133 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 31st August 2007

B e f o r e:

MR JUSTICE BEATSON

Between:

THE QUEEN ON THE APPLICATION OF HARDISON

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

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(Official Shorthand Writers to the Court)

The **Claimant** appeared as a litigant in person via videolink
MR G CLARKE (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE BEATSON: This is a renewed application for permission to apply for judicial review of the decision of the then Home Secretary on 13th October 2006 not to review the drug classifications under the Misuse of Drugs Act 1971. The application is brought by Mr Casey Hardison, a serving prisoner. The hearing was conducted by way of a video link
2. The decision under challenge was made in the Government's reply to the Filth Report from the House of Commons Science and Technology Committee in the session 2005/2006 and also in its response to recommendations by the Advisory Committee on the Misuse of Drugs in a document dated September 2006, pages 18 and 22 of which are before me.
3. Since the application was lodged, on 29th January 2007, Mr Hardison has elaborated his claim in a draft statement of claim served in February this year. He relies in particular on the fact that the Government, having through the Home Secretary announced on 19th January 2006 that there would be a review of the classification system, has resiled on what he characterises as its promise. The statement made by the then Home Secretary was:

"The more I have considered these matters, the more concerned I have become about the limitations of our current system. I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system, on the basis of which I will make proposals in due course . . .

Evidence must be the core of what we do in this area . . . We will continue to review the matter on the basis of evidence as it evolves over time . . . One needs to proceed on the basis of evidence . . . I want to emphasize to the House the importance of evidence and research on this subject."

4. The Secretary of State in a acknowledgment of service, and oral submissions by Mr Clarke resists this application on the ground that it is substantially a challenge to Parliamentary and Governmental policy decisions as to the classification of drugs under the 1971 Act. Sullivan J. who considered the application on the papers, agreed win the defendant's summary grounds, stating that the claim is in reality, if not in form, a challenge to the merits not the legality of the Government's drugs policy.
5. Before me, as I have stated, Mr Hardison focussed on the Home Secretary's statement. He described it as a promise to have a review which was made because of the Home Secretary's concerns. He submitted that the renegeing on that promise without public interest grounds and notwithstanding the acknowledgment by the Government that alcohol and tobacco account for more health problems and deaths than illicit drugs raises an arguable ground for judicial review. Essentially, this application challenges the separate methods of regulation and prohibition of tobacco and alcohol, and the substances prohibited by the 1971 Act. The applicant submits there is scientific evidence for regarding these items as all capable of altering behaviour and therefore all capable of classification as some form of drug.

6. The background to this application is the position which Mr Hardison finds himself in. He was convicted on 18th March 2005 after an eight week trial to a total sentence of 20 years of what the Court of Appeal described as the production of Class A drugs on a large commercial scale: see [2006] EWCA Crim 1502 at paragraph 29. The issues before the Court of Appeal are not relevant to the matters before this court. I observe only that the grounds in this application other than the promise, and the grounds underlying the "promise" ground, were in a sense before the Court of Appeal (see paragraphs 9 and 10 of the decision). The court's finding that the judge was entitled to conclude that the appellant was producing the drugs on a large commercial scale are what no doubt led the Court of Appeal to dismiss the appeal against sentence.
7. I deal with the grounds now contained in the draft statement of claim, in the applicant's response to the acknowledgment of service, and in his notice of renewal. First, as far as the claim based on legitimate expectation is concerned, I do not consider that the statement made in Parliament on 19th January 2006 arguably gives rise to a legitimate expectation; either a substantive legitimate expectation or a procedural legitimate expectation. The courts have not regarded general statements made in Parliament as founding legitimate expectations: see, for example, **Auburn v Sunderland Council** [2003] QB 151 at 76 in the context of a statement as to the effect of words in a bill. See also **R v Secretary of State for the Home Department ex parte Mehari** [1994] QB 474 at 492; and the speech of Lord Bingham in **Kebilene** [2000] 2 AC 326 at 339.
8. Moreover, as far as substantive legitimate expectation is concerned, this statement is not arguably within the **Coughlin** guidelines. The decision of the Court of Appeal in that case emphasised the importance of the fact that the statement made in relation to the care home was one made to few individuals. While it is clear that this statement is of importance to the claimant, the fact that it was a general statement made to Members of Parliament primarily, but with impact to the public, takes it right outside the **Coughlin** guidelines.
9. The fact that policy can change and Government is entitled to change policy, notwithstanding what assurances are given, is dramatically seen from the case of **Findlay** [1985] 1 AC 318. In that case a policy as to the tariff effect of a sentence and when serving prisoners could expect to be released was changed and applied retrospectively to those currently serving. It was held that the Government was entitled to do that. In the present case, a broad statement that there would be a review is indeed, as Mr Clarke argued, a statement of policy and it is a much less focussed statement than the statements made by Home Secretaries in **Findlay**. I do not need, in these circumstances, to deal with the fact that the claimant has not shown any reliance on the statement made in January 2006. Although reliance is not legally essential to found legitimate expectations, it is accepted in the authorities that it is highly significant in deciding whether such an expectation is broken and gives rise to judicial review.

10. I turn to grounds not dealt with by Mr Hardison in his oral submissions. If I may say, these are a model of what a litigant in person should do. He put his points in writing, and articulated the main ones, and did not refer to the grounds other than legitimate expectation and promise because that is the core of his challenge. But his claim also relies on the irrationality of the decision and the failure of the Secretary of State to take into account relevant matters, in particular the reports of the Science and Technology Committee and the Advisory Council on the Misuse of Drugs. I do not consider that putting the case in those ways assists him. I am hampered in my consideration of this because, while I have the conclusions and the reasons for the decision not to have a review, I do not have the whole document in front of me. But the document is a response to the Science and Technology Committee's report, and it is difficult to see that that response does not take account of it, or that the decision to prefer a separate system of regulation for substances not prohibited is irrational. In this, the matter is put well in paragraph 7 of the summary grounds:

"The Government's policy is to regulate drugs which are classified as illegal through the 1971 Act and to regulate the use of alcohol and tobacco separately. This policy sensibly recognizes that alcohol and tobacco do pose human health risks and can have anti-social effects, but recognises also that the consumption of alcohol and tobacco is historically embedded in society and that responsible use of both alcohol and tobacco is both possible and commonplace."

11. I turn to the arguments based on the combination of Article 1 Protocol 1 and Article 14 of the Convention. The failure to review the classification does not of itself affect the prohibitions in the Misuse of Drugs Act 1971. The failure does not arguably violate Article 1 Protocol 1 given the breadth of paragraph 2 of that Article. Paragraph 2 entitles the State to deprive a person of possessions in the public interest and subject to conditions provided for by law. A wide margin is given by the Strasbourg Court to national authorities in deciding what is in the public interest. It is clear that the Misuse of Drugs Act 1971 and the allied confiscation legislation makes provision for the deprivation of possessions by law. In the light of the wide margin of discretion, the fact that the prohibition of certain substances but not others is very common throughout the states subject to the European Convention, and indeed elsewhere, it is not arguable that the failure to review the position with a view either to removing certain matters from the 1971 Act or bringing in alcohol and/or tobacco is a violation of this provision. Mr Hardison bases his claim not just on Article 1 but on its combination with Article 14. It is the discrimination, he alleges, between the position of those who wish to use drugs which are proscribed and those who wish to use alcohol and/or tobacco which causes the breach. It is important to remember that the Article 14 right is not a freestanding right but is only engaged in regard to enjoyment of rights and freedoms guaranteed by the Convention. The status of being a person who wishes to use drugs, to put the matter in its most neutral form, is not one of the statuses recognised as protected by Article 14, and I do not consider that it is arguable that, taken together with Article 19 the First Protocol, there is any grain of a basis for a challenge.

12. The acknowledgment of service also claims that the case should not continue because Mr Hardison has not proceeded promptly. I would not, if there had been any point of substance in the claim, refused permission on this ground. He was a week out of time. He is a litigant in person. He is in prison with consequential difficulties, although no doubt being in prison he has more time to do the work than most litigants in person who are in gainful employment. Sullivan J considered this case to be totally without merit. Despite the length of my reasons for dismissing this application, I entirely agree with that. This application is dismissed.
13. MR CLARKE: I have no application, my Lord.
14. MR JUSTICEBEATSON: Thank you. Thank you, Mr Hardison. I think we are going to disconnect the link now.