



29 October 2009

PRESS SUMMARY

R (on the application of L) (FC) (Appellant) v Commissioner of Police of the Metropolis [2009] UKSC 3; on appeal from [2007] EWCA Civ 168

JUSTICES: Lord Hope (Deputy President), Lord Saville, Lord Scott, Lord Brown and Lord Neuberger

BACKGROUND TO THE APPEAL

The appellant obtained a job as a playground assistant. In connection with her employment, the police were required to provide her with an enhanced criminal records certificate (“ECRC”). They disclosed to the school that she had been accused of neglecting her child and non-cooperation with social services, and her employment was terminated. She claimed that the police disclosure violated her right to respect for her private life under the Human Rights Act (“the HRA”).

JUDGMENT

The Supreme Court holds that, when determining whether to disclose non-criminal related information retained in police records in connection with an application to work with vulnerable persons, the police must give due weight to the applicant’s right to respect for her private life. However, the facts narrated were true, the allegation was directly relevant to her employment and the school was entitled to be apprised of the information.

Therefore, while the consequences for the appellant’s private life are regrettable, disclosure could not in this case be said to be disproportionate to the public interest in protecting vulnerable people [para [48], [49], [58] and [86]]. The appeal must be dismissed.

REASONS FOR THE JUDGMENT

- Article 8 was applicable, as: (i) the dismissal affected L’s ability to interact with others and damaged her reputation [para [24]]; (ii) public information can implicate Article 8 when it is collected/stored by the public authorities [para [26]]; and (iii) the relevant information related to private proceedings [para [28]].
- All ECRC disclosure decisions are likely to engage Article 8, as: (i) the information has been collected/stored in police records; and (ii) disclosure of relevant information is likely to diminish the subject’s employment prospects. The proportionality of the proposed disclosure must be considered in each case [paras [29], [41] and [70]].
- The police must apply a two-stage analysis, so as to consider whether: (i) the information is reliable and relevant; and (ii) in light of the public interest and the likely impact on the applicant, it is proportionate to provide the information [paras [40] and [79]].

- Those who apply for positions that require an ECRC cannot be regarded as consenting to their privacy rights being violated. Consent is predicated on the basis that the right to respect for private life will be respected **[para [43]]**. Otherwise, legislation could easily circumvent HRA rights by effectively curtailing access to benefits unless people ‘consent’ to invasions of their rights **[para [73]]**.
- The police’s historic approach towards balancing the public interest in protecting vulnerable persons and respecting Article 8 rights was flawed, as they applied a general presumption that in cases of conflict the public interest should generally prevail **[para [44]]**. Article 8 requires that neither consideration be afforded precedence over the other – each interest should be given careful consideration in assessing the proportionality of the proposed disclosure **[paras [45], [63] and [85]]**.
- Factors to be considered in assessing proportionality include: (i) the gravity of the relevant information; (ii) its reliability; (iii) its relevance; (iv) the existence of an opportunity to make representations; (v) the period that has elapsed since the relevant events; and (vi) the adverse effect of the disclosure **[para [81]]**.
- If disclosure may be: (i) irrelevant; (ii) unreliable; or (iii) out-of-date, the applicant should be given the opportunity to make representations prior to the decision to disclose **[paras [46], [63] and [82]]**.
- Lord Scott agreed in the result but differed in reasoning, stating that: (i) a presumption prioritising the public interest did not breach Article 8; and (ii) the consent of the applicant negated any claimed violation **[paras [58] and [59]]**.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html