



23 October 2013

PRESS SUMMARY

R v Gul (appellant) [2013] UKSC 64
On appeal from [2012] EWCA Crim 280

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Hope, Lord Mance, Lord Judge, Lord Kerr, and Lord Reed.

BACKGROUND TO THE APPEAL

The issue in the appeal is whether the definition of ‘terrorism’ in the Terrorism Act 2000 includes military attacks by non-state armed groups against national or international armed forces in a non-international armed conflict.

Mr Gul was convicted by a jury of five counts of disseminating terrorist publications, for which he was sentenced to five years’ imprisonment. The offence was created by section 2 of the Terrorism Act 2006, which defines ‘terrorist publications’ as including publications which are likely to be understood as ‘a direct or indirect encouragement ... to the commission, preparation, or instigation of acts of terrorism’. ‘Terrorism’ is defined in section 1 of the Terrorism Act 2000, as the use or threat of action, inside or outside the United Kingdom,

‘(a) involving serious violence against a person, involving serious damage to property, endangering another person’s life, creating a serious risk to public health or safety, or designed to seriously interfere with seriously disrupt an electronic system;

‘(b) designed to influence a government or intergovernmental organization or to intimidate the public or a section of the public; and

‘(c) made for the purpose of advancing a political, religious, racial, or ideological cause.’

The publications in question included videos which Mr Gul posted on YouTube showing (i) attacks by members of al-Qaeda, the Taliban, and other proscribed groups on military targets in Chechnya, and on the Coalition forces in Iraq and in Afghanistan, (ii) the use of improvised explosive devices against Coalition forces, (iii) excerpts from ‘martyrdom videos’, and (iv) clips of attacks on civilians, including the 11 September 2001 attack on the United States. These videos were accompanied by commentaries praising the bravery, and martyrdom, of those carrying out the attacks, and encouraging others to emulate them.

The Court of Appeal refused Mr Gul’s appeal against conviction and sentence. His appeal to the Supreme Court was based on a challenge to the conclusion of the Court of Appeal (arising from a direction given by the trial judge following a request from the jury) that the definition of terrorism included military attacks by non-state armed groups against national or international armed forces in their territory.

JUDGMENT

The Supreme Court unanimously dismisses Mr Gul’s appeal for reasons contained in a judgment given by Lord Neuberger and Lord Judge, with whom the other members of the Court agree.

Mr Gul argued that both domestic law and international law required the statutory definition of terrorism to be interpreted narrowly, so as to exclude its application to situations such as those depicted in some of the videos which he had uploaded, namely those involving actions by non-state armed troops attacking foreign armed forces in their territory.

REASONS FOR THE JUDGMENT

The court addresses this argument first by considering the application of familiar domestic law principles to the statutory definition of ‘terrorism’, and then by considering whether that results in a conclusion which has to be adapted to meet those requirements of international law that are incorporated into domestic law [25].

Applying the familiar domestic law approach to statutory interpretation, the Court holds that there is no basis on which the natural, very wide, meaning of section 1 of the 2000 Act could be read restrictively, as Mr Gul

argued. The definition had clearly been drafted in deliberately wide terms so as to take account of the various and possibly unpredictable forms that terrorism might take, and the changes which may occur in the diplomatic and political spheres [31–2, 38]. In reaching this conclusion, the Court considers that section 117 of the 2000 Act, which prohibits the prosecution of most offences under the 2000 and 2006 Acts without the consent of the Director of Public Prosecutions or (in some cases) the Attorney General, is of no assistance [35–37, 42]. The Court also observes that creating an offence with a very broad reach and then invoking prosecutorial discretion as a means of mitigation is undesirable in principle and should only be adopted if it is unavoidable.

In these circumstances, the only reason for the Court to interpret the definition more restrictively would be if it conflicted with the European Convention on Human Rights (which was not relied on by Mr Gul) or with the United Kingdom’s obligations in international law more generally [38].

The first aspect of Mr Gul’s argument here was that the United Kingdom’s international obligations require it to define terrorism more narrowly in its criminal laws, as it should have the same meaning as it has in international law. The second aspect was that the United Kingdom could not criminalize terrorism happening abroad except so far as international law allowed.

Both aspects of the international law argument face the ‘insuperable obstacle’ that there is no accepted definition of terrorism in international law [44]. The U.N. General Assembly’s working group seeking to agree a comprehensive international convention on terrorism, reported in 2012 that there were disagreements as to the precise distinction between terrorism and ‘legitimate struggle of peoples fighting in the exercise of their right to self-determination’. And, although there are other, non-comprehensive treaties dealing with terrorism, there is no plain or consistent approach in UN Conventions on the issue [46–48]. This is consistent with what was said by this Court in *Al Sirri v Secretary of State* [2012] UKSC 54, [2012] 3 WLR 1263, para 37 [44].

Moreover, there have been U.N. resolutions referring to the activities of al-Qaeda and the Taliban as ‘terrorism’, although their actions involved insurgents attacking forces of states and intergovernmental organizations in non-international armed conflict. And the international law of armed conflict does not give any immunity combatants in non-international armed conflicts [49–50].

It is true that some other provisions of the 2000 and 2006 Acts give effect to treaties that do not extend to insurgent attacks on military forces in non-international armed conflicts. But there was no reason why the United Kingdom could not go further in the 2000 Act than the treaties had. And even if those treaties had intended to limit the definition of terrorism that they applied, that would only affect the particular provisions of the 2000 Act that implemented those treaties [54].

As to the second aspect of the international law argument, it is irrelevant for present purposes whether the United Kingdom can criminalize certain actions committed abroad, because the material in this case was disseminated in the United Kingdom [56].

Therefore, whether one approaches the matter as an issue of purely domestic law, or as an issue of domestic law read in the light of international law, there is no valid basis for reading the definition of terrorism more narrowly than the plain and natural meaning of its words suggested.

In parting, the Court notes that although the issue is one for Parliament to decide, the current definition of terrorism is ‘concerningly wide’. [38] Canada and South Africa, for example, exclude acts committed by parties regulated by the law of armed conflict from the definition, and a recent report in Australia recommends that that country should follow suit. [61]

The Independent Reviewer of Terrorism Legislation in the United Kingdom, Mr David Anderson QC, has made the point that ‘the current law allows members of any nationalist or separatist group to be turned into terrorists by virtue of their participation in a lawful armed conflict, however great the provocation and however odious the regime which they have attacked’ [61]. The 2000 and 2006 Acts also grant substantial intrusive powers to the police and to immigration officers, which depend upon what appears to be a very broad discretion on their part. While the need to bestow wide, even intrusive, powers on the police and other officers in connection with terrorism is understandable, the fact that the powers are so unrestricted and the definition of ‘terrorism’ is so wide is probably of even more concern than the power of criminal prosecution to which the Acts give rise. [64]

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 www.supremecourt.gov.uk/decided-cases/index.html