



23 February 2011

PRESS SUMMARY

R v Forsyth (Appellant); R v Mabey (Appellant) [2011] UKSC 9

On appeal from the Court of Appeal EWCA Crim 2437

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale and Lord Brown

BACKGROUND TO THE APPEAL

This appeal concerns the question whether the power to create criminal offences granted to Her Majesty's government by section 1 of the United Nations Act 1946 (the "**1946 Act**") may only lawfully be exercised at or about the time of the relevant resolution by the Security Council of the United Nations which such order is implementing.

At the time of the hearing of this appeal, the appellants, Forsyth and Mabey, were awaiting criminal trial on a number of charges, of which one is an offence of making funds available to Iraq contrary to the Articles 3(a) and 11(4) of the Iraq (United Nations Sanctions) Order 2000 (the "**Order**"). As a preliminary issue prior to the trial, the appellants sought to establish that the Order creating the offence of making funds available to Iraq was *ultra vires* section 1 of the 1946 Act. Section 1 grants power to the government to implement resolutions of the Security Council by an executive order without any parliamentary process. The appellants' argument was that such a wide executive power could be justified only if the resolutions of the Security Council were implemented urgently and the power, therefore, must be construed as subject to its being exercised within a very short timescale. In essence, the appellants maintained that unless the power to make an order under the 1946 Act is exercised "at or about the same time" as the relevant Security Council resolution, that power is lost by the passage of time. The Order in question was made 10 years after the relevant resolution.

The appellants lost both in the Crown Court and the Court of Appeal. The matter came before this court on 6 December 2010 when, at the outset of the hearing, the appellants were granted permission to appeal; at the conclusion of the hearing the appeal was dismissed for reasons to be given later. The present judgment contains those reasons.

JUDGMENT

Lord Brown delivered the judgment of the court which held that the power conferred on the government by section 1 of the 1946 Act cannot be restricted by confining its exercise within an artificially restricted timeframe.

REASONS FOR THE JUDGMENT

The suggested analogy between the case of *A v HM Treasury* which was concerned with proper limits of the *content* of orders made pursuant to section 1 of the 1946 Act and the present appeal seeking to impose limits upon the *time* within which the power is properly exercisable is false: [9]. Unlike the case of *A*, where Hansard needed to be examined to confirm the absence of parliamentary intention to permit fundamental human rights to be overridden, there is no good reason to look behind the actual words of the 1946 Act in this case, and indeed a real risk of breaching parliamentary privilege if one does. Had Parliament intended to confine the order-making power to urgent use, one would have expected it to be clearly provided for in the 1946 Act: [10]-[11]. Instead, the 1946 Act is entirely silent on the question and indeed provides for a power to vary the existing order without placing any time limitations upon this power of variation: [12].

The history of how the Order in the present case came to be made so long after the UN resolution it was implementing confirms that it would be inappropriate to limit the exercise of the power conferred by the 1946 Act within a restricted timeframe by demonstrating that Security Council resolutions are not simply one-off measures requiring immediate implementation by member states which then recede into history: [18].

References in square brackets are to paragraph numbers 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