



## Press Summary

*An Order of the High Court is in force that nothing should be published that would or might tend to: (i) identify the respondent as being subject to a temporary exclusion order; or (ii) identify the address at which the respondent is residing; or (iii) identify the respondent's wife and/or children.*

**5 August 2024**

### **QX (Respondent) v Secretary of State for the Home Department (Appellant)**

**[2024] UKSC 26**

*On appeal from [2022] EWCA Civ 1541*

**Justices:** Lord Reed (President), Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lord Stephens, Lady Rose and Lady Simler

#### **Background to the Appeal**

This appeal arises out of QX's application for review of the Home Secretary's decisions relating to the imposition of a temporary exclusion order ("TEO") under the Counter-Terrorism and Security Act 2015 ("the **2015 Act**"). The purpose of a TEO is to protect the public in the United Kingdom from the risk of terrorism posed by the person who is subject to the order. The TEO controls the timing and manner of the person's return to the United Kingdom. It also enables the Home Secretary to impose suitable obligations on them when they return.

QX is a British citizen who lived in Syria between 2014 and 2018. On 26 November 2018, the Home Secretary applied to the High Court for permission to impose a TEO on QX, alleging that that he had travelled to Syria and was, or had been, aligned with an al-Qaeda aligned group ("the **Syria allegation**"). The High Court granted permission and the Home Secretary imposed the TEO. QX was at that stage facing deportation from Turkey to the United Kingdom. He returned to the United Kingdom on 9 January 2019, in accordance with the terms of a permit issued by the Home Secretary.

On his return, QX was served with the TEO and notice of the related obligations imposed on him by the Home Secretary. These included obligations to report at a specified police station at a particular time every day ("the **reporting obligation**") and to attend two two-hour appointments every week ("the **appointments obligation**"). The TEO expired on 25 November 2020 and the obligations then came to an end. On 24 March 2021, QX was convicted

of breaching the reporting obligation because he had failed to report at the specified police station on three occasions. He received a suspended sentence of 42 days' imprisonment.

In November 2019, QX applied to the High Court for review of the Home Secretary's decision to impose the reporting and appointments obligations ("the **obligations review**"). He later also sought review of the Home Secretary's decision to impose the TEO and to maintain it in force ("the **imposition review**"). A dispute then arose between the parties as to whether QX is entitled, by reason of the right to a fair hearing guaranteed by article 6(1) of the European Convention on Human Rights ("the **Convention**") and implemented in domestic law by the Human Rights Act 1998, to disclosure of the evidence relied on by the Home Secretary in support of the Syria allegation. That is the issue the Supreme Court is asked to decide in this appeal.

The High Court held that article 6(1) applied to the obligations review, but not to the imposition review. It followed that, in the obligations review, QX was entitled to disclosure of any evidence relating to the Syria allegation which was relied on by the Home Secretary in support of the decision to impose the reporting and appointments obligations, to the extent required by article 6(1) of the Convention. However, he was not entitled to disclosure of any other evidence relating to the Syria allegation which was relied on by the Home Secretary in the imposition review, in support of the decision to impose the TEO. The Court of Appeal allowed QX's appeal on this issue. It held that article 6(1) applied to the imposition review because it would be directly determinative of QX's civil rights. QX was therefore entitled to a level of disclosure in the imposition review which complied with article 6(1). The Home Secretary appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously dismisses the Home Secretary's appeal. It holds that the right to a fair hearing guaranteed by article 6(1) of the Convention applies to the imposition review. This means that the Home Secretary must provide QX with article 6(1) compliant disclosure of the evidence relied on in support of the Syria allegation in both the imposition review and the obligations review. Lord Reed gives the judgment, with which the other members of the Court agree.

## **Reasons for the Judgment**

The right to a fair hearing guaranteed by article 6(1) of the Convention is a key human right, both because access to justice is a pillar of the rule of law and because it enables a wide range of other human rights to be enforced. The right to a fair trial is also fundamental under our domestic law, though the appeal is not argued on this basis. Article 6(1) applies to "the determination ... of civil rights and obligations or of any criminal charge". In broad terms, proceedings will concern the determination of civil rights and obligations if: (i) there is a legal dispute in which (ii) a civil right or obligation is in issue that (iii) will be directly determined by the outcome of the dispute [53], [60]-[62].

In the present case, it is clear that there is a legal dispute, but the question whether a challenge to the imposition of a TEO concerns the determination of a civil right or obligation is more complex. QX argues that both conditions (ii) and (iii) are met because the imposition review will directly determine both his right of abode in the United Kingdom and his rights under article 8 of the Convention, which guarantees respect for private and family life. However, the Supreme Court rejects QX's arguments based on the right of abode. It finds that this right does not satisfy condition (ii) because it is not a civil right within the meaning of article 6(1). It follows that the right of abode cannot provide a basis for holding that article 6(1) applies to the imposition review [63]-[86].

Turning to the arguments based on article 8, the parties agree that the reporting and appointments obligations were sufficiently intrusive to interfere with QX's article 8 rights. They also agree that those article 8 rights are civil rights for the purposes of article 6(1). Since the obligations review will determine whether the interference with QX's article 8 rights was lawful, it is common ground that article 6(1) applies to the obligations review. QX submits that article 6(1) also applies to the imposition review because the Home Secretary's power to impose the obligations is contingent on the validity of the TEO. This means that, if the imposition review results in the TEO being quashed, the obligations will also be quashed. In response, the Home Secretary argues that, if the TEO is upheld, the obligations will be unaffected pending the outcome of the obligations review. The imposition review is therefore only potentially decisive of QX's civil rights. It is not directly determinative of them, so condition (iii) is not met and article 6(1) does not apply [87]-[91].

The Supreme Court rejects the Home Secretary's argument, which gives too much weight to matters of form [119]. The Court holds that, where there are two distinct sets of proceedings and only one of them is immediately concerned with civil rights, article 6(1) can apply to both sets of proceedings provided they are sufficiently closely linked [92]-[102]. This test is satisfied in QX's case. To begin with, although the decision to impose the TEO and the decision to impose the obligations are made under different provisions of the 2015 Act, they are in reality two component parts of a single mechanism for protecting the public in the United Kingdom from the risk of terrorism posed by the person who is subject to the TEO. Similarly, although the imposition review and the obligations review are brought under different subsections of section 11 of the 2015 Act, they are less distinct than the legislation might suggest for the following reasons [26], [103]-[106].

First, it is common for an obligations review to be accompanied by and to overlap substantively with an imposition review. This happens because a person can only apply for a review once they are in the United Kingdom. It follows that their main motivation for doing so will normally be to terminate the obligations imposed following the TEO because, by that stage, only the obligations will significantly restrict their activities. In the present case, QX's only reason for pursuing the imposition review is to quash the obligations and, therefore, his conviction for breaching them. Secondly, there will often be substantial evidential overlap between the two sets of proceedings. Here, QX disputes the Syria allegation in both the imposition review and the obligations review, meaning that the same evidence is likely to be relevant to both sets of proceedings. Thirdly, it follows from the high level of substantive and evidential overlap that the issues in both reviews will likely be heard together at the same time by the same judge, as they have been in QX's case to date [107]-[111].

Considered as a whole, the imposition review and the obligations review are so closely interrelated that to deal with them separately would significantly weaken the protection given to QX's right to a fair hearing. Article 6(1) must therefore apply to the imposition review. Otherwise, the Home Secretary would be able to defend the decision to impose the TEO, which provides the legal basis for the obligations, on the basis of evidence that would not be disclosed to QX and which he would not be able to dispute or explain. The court would not thereafter be able to undertake the obligations review with a clean slate. Rather, it would be required to review the Home Secretary's decision to impose and maintain the obligations against the background of the findings made in the imposition review. QX would not, then, be given a fair opportunity to challenge the underlying basis for imposing the obligations [112]-[120].

*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: [Decided cases - The Supreme Court](#)**