



**In the High Court of Justice
Queens Bench Division
Administrative Court**

CO Ref:
CO/1567 /2007

In the matter of an application for Judicial Review

The Queen on the application of

Corner house & Another

Versus

SFO

Application for permission to apply for Judicial Review

NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of Service filed by the Defendant and / or Interested Party]

Order by the Honourable Mr Justice Collins

Permission is hereby refused.

Observations:

1. I recognise the importance of the issues raised in this claim and in particular the views expressed by academics as to the construction of Article 5. However, there can be no doubt that national security does trump other issues, particularly where it is clear domestic law that a Convention is not part of that law unless expressly incorporated by Act of Parliament. The courts attitude to issues of national security is that if there is evidence – which usually will be found in a statement by a Minister or a suitably senior official – that a particular decision was based on national security grounds the court will not intervene unless it can be shown that the reliance on national security was irrational.
2. I do not accept that Article 5 has the effect contended by the claimants. The potential effect on relations with another state will not automatically result in a danger to national security. The SFO has taken into account, because it has properly listened to advice from those responsible for protecting national security, that to continue the investigation would produce a risk to national security and to the lives of British citizens. It is in my view wholly unarguable that the Bribery Convention, which has no concerns with national security issues, would have been expected to include a specific exemption to deal with national security. For the reasons given in the Acknowledgement of Service, it is clear that national security must always prevail and no State could be expected to take action which jeopardises the security of the State or the lives of its citizens. In any event, the potential effect upon relations with a State is not the same as consideration of the effect of a particular action upon national security even if the danger to national security results from the reaction of another State to the action in question.
3. The fact (if it be established) that that other State would be acting in contravention of its international obligations is nothing to the point. It is the resulting damage to national security that matters whether or not it results from a breach of law (international or other) by the body or State responsible.
4. The attempt to show a factual issue is in my view of no substance for the reasons given in the Acknowledgement of Service.
5. Overall, I accept the Acknowledgement of Service grounds for refusing permission. I am satisfied that, even if it would be said that there is a theoretical arguable point based on the construction of Article 5 – and, as I have indicated, I do not think there is – this claim would be bound to fail and much money and time would have been spent to no good effect.
6. Finally, it is only in exceptional cases that judicial review of decisions relating to the investigation of crime should proceed. This claim does not qualify.

Sir Andrew Collins

29 MAY 2007

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:
Ref: