MIDDLE TEMPLE ROSAMUND SMITH MOOTING COMPETITION 2025

IN THE SUPREME COURT OF THE UNITED KINGDOM

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

v.

HADDOCK

Respondent

THE FACTUAL AND LEGAL BACKGROUND

1. On 15 September 2023, members of the protest group Combat War carried out arson attacks on the Ministry of Defence and companies supplying arms to the United Kingdom's armed forces. In a press release later that night, Mr Haddock, the Chair of Combat War, said that the organisation was opposed to all military activity, and opposed all military action, including military action by the UK's armed forces against enemies of the UK or in support of allies of the UK.

2. On 30 September 2023, the Home Secretary exercised the power pursuant to section 3 of the Terrorism Act 2000 to make an order amending Schedule 2 to that Act by adding Combat War to the list of proscribed organisations under the Act. Section 3 as amended, so far as relevant, provides:

> ***3 Proscription***.
>
> *(1) For the purposes of this Act an organisation is proscribed if—*
>
> *(a) it is listed in Schedule 2, or*
>
> *(b) it operates under the same name as an organisation listed in that Schedule.*
>
> …
>
> *(3) The Secretary of State may by order—*

(a) add an organisation to Schedule 2;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(4) The Secretary of State may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism.

(5) For the purposes of subsection (4) an organisation is concerned in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise concerned in terrorism.

(5A) The cases in which an organisation promotes or encourages terrorism for the purposes of subsection (5)(c) include any case in which activities of the organisation—

(a) include the unlawful glorification of the commission or preparation (whether in the past, in the future or generally) of acts of terrorism; or

(b) are carried out in a manner that ensures that the organisation is associated with statements containing any such glorification.

(5B) The glorification of any conduct is unlawful for the purposes of subsection (5A) if there are persons who may become aware of it who could reasonably be expected to infer that what is being glorified, is being glorified as—

(a) conduct that should be emulated in existing circumstances, or

(b) conduct that is illustrative of a type of conduct that should be so emulated.

(5C) In this section—

"glorification" includes any form of praise or celebration, and cognate expressions are to be construed accordingly;

"statement" includes a communication without words consisting of sounds or images or both.

…

3. "Terrorism" is defined by section 1 of the Act as follows:

1 ***Terrorism: interpretation****.*

(1) In this Act "terrorism" means the use or threat of action where—

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government [F1or an international governmental organisation] or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

(a) "action" includes action outside the United Kingdom,

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

4. Combat War applied, pursuant to section 4 of the Act, to the Home Secretary to remove the organisation from the list of proscribed organisations on the grounds that (i) the organisation was peace-loving and strongly disapproved of terrorism, (ii) the order interfered with the exercise of the organisation's Convention rights and those of its members and supporters, particularly the rights under ECHR Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of peaceful assembly and association),

(iii) there were no proportionate grounds for interfering with the rights by proscribing the organisation, and (iv) the order was in any case irrational in the circumstances. The Home Secretary rejected the application. Combat War did not exercise its right under section 5 of the Act to appeal against this refusal to the Proscribed Organisations Appeal Commission.

5. On 17 September 2024, Mr Haddock was standing outside the Ministry of Defence building in London carrying a placard which carried the words, 'Combat War: Make Love not War'. He was arrested, and charged with one offence of being a member of a proscribed organisation contrary to section 11(1) of the Terrorism Act 2000, and one offence of supporting a proscribed organisation, namely Combat War, contrary to section 12(1A) of the Terrorism Act 2000 as amended by the Counter-terrorism and Border Security Act 2019. Section 11 as amended provides:

> *(1) A person commits an offence if he belongs or professes to belong to a proscribed organisation.*
>
> *(2) It is a defence for a person charged with an offence under subsection (1) to prove—*
>
> *(a) that the organisation was not proscribed on the last (or only) occasion on which he became a member or began to profess to be a member, and*
>
> *(b) that he has not taken part in the activities of the organisation at any time while it was proscribed.*
>
> *(3) A person guilty of an offence under this section shall be liable—*
>
> *(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or*
>
> *(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.*
>
> *(4) In subsection (2) "proscribed" means proscribed for the purposes of any of the following—*
>
> *(a) this Act;*
>
> *(b) the Northern Ireland (Emergency Provisions) Act 1996;*
>
> *(c) the Northern Ireland (Emergency Provisions) Act 1991;*
>
> *(d) the Prevention of Terrorism (Temporary Provisions) Act 1989;*
>
> *(e) the Prevention of Terrorism (Temporary Provisions) Act 1984;*

(f) the Northern Ireland (Emergency Provisions) Act 1978;

(g) the Prevention of Terrorism (Temporary Provisions) Act 1976;

(h) the Prevention of Terrorism (Temporary Provisions) Act 1974;

(i) the Northern Ireland (Emergency Provisions) Act 1973.

Section 12 of the Terrorism Act 2000 as amended provided:

12 Support.

(1) A person commits an offence if—

(a) he invites support for a proscribed organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property (within the meaning of section 15).

(1A) A person commits an offence if the person—

(a) expresses an opinion or belief that is supportive of a proscribed organisation,

and

(b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.]

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

(a) to support a proscribed organisation,

(b) to further the activities of a proscribed organisation, or

(c) to be addressed by a person who belongs or professes to belong to a proscribed organisation.

(3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities.

(4) Where a person is charged with an offence under subsection (2)(c) in respect of a private meeting it is a defence for him to prove that he had no reasonable cause to believe that the address mentioned in subsection (2)(c) would support a proscribed organisation or further its activities.

(5) In subsections (2) to (4)—

(a) "meeting" means a meeting of three or more persons, whether or not the public are admitted, and

(b) a meeting is private if the public are not admitted.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

THE LEGAL ISSUES AT TRIAL

6. At his trial at Westminster Magistrates' Court, Mr Haddock (a litigant in person) made two submissions in relation to both charges.

7. First, he argued that the order proscribing Combat War was unlawful because (i) it violated his Convention rights and (ii) it was *Wednesbury* unreasonable. This invalidity should be available by way of defence to a charge under section 3 of the Terrorism Act 2000: see particularly *Boddington v. British Transport Police* [1998] UKHL 13, [1999] 2 AC 143, HL. Combat War was listed as a proscribed organisation in primary legislation, but that would be of no effect if the subordinate legislation inserting the organisation's name in Schedule 2 to the Act was invalid: *RR v. Secretary of State for Work and Pensions* [2019] UKSC 52, [2019] 1 WLR 6430.

8. Secondly, he sought to lead evidence that he had been exercising his right under ECHR Article 10 when holding up his placard, and that it was therefore incumbent on the prosecution to demonstrate that convicting him would not unlawfully violate his Convention right under section 6(1) of the Human Rights Act 1998: *Director of Public Prosecutions v. Ziegler* [2021] UKSC 23, [2022] AC 408, SC.

9. In response to the first submission, counsel for the prosecutor argued that: (i) the court had no jurisdiction to entertain the Convention rights argument, because the only forum for raising it was the Proscribed Organisations Appeal Commission (see Proscribed Organisations Appeal Commission (Human Rights Act 1998 Proceedings) Rules 2006, SI 2006/2290, rule 2, made under section 7 of

the Human Rights Act 1998); and (ii) it was an abuse of the process of the Magistrates' Court to use it to launch an attack on the proscription order in criminal proceedings by reference to *Wednesbury* unreasonableness when Combat War had failed either to exercise its right to challenge the refusal to de-proscribe the organisation before the Proscribed Organisations Appeal Commission or to apply for judicial review. Counsel relied on *O'Reilly v. Mackman* [1983] 2 AC 237, HL, especially *per* Lord Diplock at p. 285; *R. v. Wicks* [1998] AC 92, HL; and *R. v. Clayton* [2014] EWCA Crim 1030, [2014] 1 WLR 3994, CA. As to the second point, regardless of the Court's decision on the first point, it was not open to the defendant to argue that the proscription order had violated Convention rights, because the Act made it clear that Parliament had authoritatively determined that the process could never amount to a disproportionate interference with Convention rights; proportionality was 'baked into' the statute itself, so there was no scope for the court to make its own assessment. Counsel relied on *Director of Public Prosecutions v. Cuciurean* [2022] EWHC 734 (Admin), [2022] QB 888, DC; *Attorney General's Reference (No. 1 of 2023)* [2024] EWCA Crim 243, [2024] 1 WLR 3205, CA; *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32, [2023] AC 505, SC; and *R. v. Sarti (Chara)* [2025] EWCA Crim 61, [2025] 1 WLR 3276, CA.

10. The court rejected the prosecutor's argument on issue (i), because: (a) the instant proceedings were for a criminal offence, whereas section 7 of the Human Rights Act 1998 and the Proscribed Organisations Appeal Commission (Human Rights Act 1998 Proceedings) Rules 2006 related only to proceedings for acts incompatible with Convention rights; and (b) it would not be an abuse of process for Mr Haddock to raise the invalidity of the proscription order by way of defence to a criminal charge. However, the court accepted the prosecutor's argument in relation to the second issue, and accordingly declined to admit evidence relating to justifications for the interference with the defendant's Convention rights or to make an assessment of the compatibility of the

legislation with Convention rights, and in due course convicted Mr Haddock, sentencing him to a fine of £1 on each charge.

THE DIVISIONAL COURT'S JUDGMENT

11. On appeal by the defendant on the second point and the prosecutor on the first point, the Divisional Court dismissed the appeal, concluding that the Magistrates' Court had applied the correct principles on both points, although Mr Justice Wool, delivering the judgment of the Court, remarked that he could not understand why it had been thought to be in the public interest to bring the prosecution. His Lordship also said that, in his respectful view, the case-law on the availability of Convention rights by way of defence to criminal charges was lacking clarity, and suggested that it would be appropriate for the Supreme Court to revisit the matter. He concluded that, had the issues been open to the court, he would have been sceptical about the sufficiency of the Home Secretary's reasons for having made the proscription order and of the justification advanced for the undoubted interference with the organisation's and Mr Haddock's Convention rights.

THE APPEAL TO THE SUPREME COURT

12. The Divisional Court certified that two questions of general public importance arose: first, whether it could be said in the circumstances that challenging the validity of the proscription order in the course of criminal proceedings was an abuse of process of the court; secondly, whether it would have been open to the defendant to argue that his Convention rights had been violated by way of defence to a criminal charge.

13. With the permission of the Supreme Court, Mr Haddock now appeals on the second issue and the prosecutor appeals on the first issue. Mr Haddock has been prevailed upon to allow counsel to represent him *pro bono* on the appeal.

14. Leading counsel should address the first issue, concerning the appropriateness of challenging the validity of the proscription order in the criminal proceedings. Junior counsel should address the second issue, concerning the defendant's argument that the trial court should have made an assessment of the proportionality of the interference with his Convention rights by reason of the prosecution.

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