

JUSTICE PRESS RELEASE

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'A victory for the rule of law' – UK Supreme Court quashes 'draconian' and 'oppressive' terrorist financing orders

The UK Supreme Court this morning issued a ground-breaking judgment that criticised the government for violating basic rights and by-passing Parliament in the fight against terrorism. The case – in which JUSTICE intervened – was the first to be heard by the Supreme Court following its opening on 2 October 2009.

In today's judgment, the Court held that the government had acted without parliamentary authority in making two Orders in Council in 2006 that imposed sweeping financial restrictions on five men suspected of, but not charged with or convicted of, financing terrorism.

The Orders were made by the Treasury using special fast-track legislation – the United Nations Act 1946 – that allows the government to implement UN Security Council resolutions without seeking parliamentary approval. Both Orders were based on Security Council resolutions adopted after 9/11, aimed at suppressing the financing of terrorism.

However, the Supreme Court held that the Orders had gone much further than had been required by the Security Council, by imposing crippling financial restrictions on the basis of suspicion of financing, rather than against those convicted of financing terrorism. Members of the Court described the effect of the Orders as 'draconian', 'oppressive' and 'paralysing'. One Supreme Court justice, Lord Hope, described those affected as 'effectively prisoners of the state'.

In addition, those affected by the Orders had no opportunity to challenge the grounds on which they had been suspected of financing terrorism. Accordingly, the Supreme Court also held that Treasury had no power to deny effective judicial review to those whose assets had been frozen.

Lord Hope, the Deputy President of the Supreme Court, said:

The consequences of the Orders that were made in this case are so drastic and so oppressive that we must be just as alert to see that the coercive action that the Treasury have taken really is within the powers that the 1946 Act has given them. *Even in the face of the threat of international terrorism, the safety of the people is not the supreme law.* We must be just as careful to guard against unrestrained encroachments on personal liberty [paragraph 6 of the Supreme Court judgment, emphasis added].

This is a clear example of an attempt to adversely affect the basic rights of the citizen without the clear authority of Parliament [para 61]

Lord Philips, the President of the Supreme Court, said:

Access to a court to protect one's rights is the foundation of the rule of law [para 146].

Nobody should conclude that the result of these appeals constitutes judicial interference with the will of Parliament. *On the contrary it upholds the supremacy of Parliament* in deciding whether or not measures should be imposed that affect the fundamental rights of those in this country [para 157, emphasis added].

Eric Metcalfe, JUSTICE's director of human rights policy, said:

The judgment is an important victory for the rule of law in the fight against terrorism.

For several years, the government has been using the cover of UN Security Council resolutions to grant itself the power to freeze assets on the basis of suspicion and secret evidence.

It is right that the government takes action to prevent the financing of terrorism. But it was wrong for the Treasury to do so by side-stepping Parliament and violating basic rights.

For further information, contact Eric Metcalfe on 020 7762 6415 (direct line) or via email to emetcalfe@justice.org.uk.

Notes to editors

1. Additional quotes from the judgments of Lord Hope, Lord Phillips and Lord Brown are set out at the end of this press release.
2. The case of *Ahmed and others v HM Treasury* (then known as *A and others*) was the first appeal to be heard by the UK Supreme Court after it opened on 1 October 2009. In a separate judgment handed down at the same time, the Supreme Court has lifted the anonymity orders covering the appellants.
3. Under Part 3 of the Terrorism Act 2000, it is a criminal offence to finance terrorism, punishable by up to 14 years imprisonment. However, the appellants have never been charged or convicted of terrorist financing.
4. The Supreme Court noted that both Part 2 of the Anti-Terrorism Crime and Security Act 2001 and Part 6 of the Counter-Terrorism Act 2008 provide for the freezing of assets of suspected terrorists. However, the government has never used these powers against the appellants. Instead, the government relied upon Orders in Council made under the 1946 United Nations Act (see paras 23, 51-53 of Lord Hope's judgment).
5. JUSTICE was granted leave to intervene in the appeal by way of oral and written submissions. It was represented pro bono by Michael Fordham QC, Shaheed Fatima, Iain Steele and Clifford Chance LLP. A pdf copy of JUSTICE's written submissions are available on request.
6. The Supreme Court judgment in *Ahmed and others v HM Treasury* vindicates several of JUSTICE's core policy concerns. In January 2009, JUSTICE published *The Constitutional Role of the Privy Council and the Prerogative*, highlighting the use of Orders in Council made without parliamentary oversight. In June 2009, JUSTICE published *Secret Evidence*, a 238 page report examining the use of secret evidence, closed proceedings and special advocates in UK courts. In November 2009, JUSTICE published *To Assist The Court: Third party interventions in UK Courts*, detailing the practice of third party interventions before the higher courts and the role that interveners play in cases of public importance. Pdf copies of these reports are available on request.

Chairman of Council **Baroness Kennedy of the Shaws QC** *Director* **Roger Smith OBE**

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British Section of the International Commission of Jurists

EXCERPTS FROM THE SUPREME COURT JUDGMENT OF AHMED AND OTHERS v HM TREASURY

Lord Hope, Deputy President of the Supreme Court:

The consequences of the Orders that were made in this case are so drastic and so oppressive that we must be just as alert to see that the coercive action that the Treasury have taken really is within the powers that the 1946 Act has given them. Even in the face of the threat of international terrorism, the safety of the people is not the supreme law. We must be just as careful to guard against unrestrained encroachments on personal liberty [paragraph 6 of the Supreme Court judgment].

It is no exaggeration to say ... that designated persons are effectively prisoners of the state. I repeat: their freedom of movement is severely restricted without access to funds or other economic resources, and the effect on both them and their families can be devastating (para 11).

If the rule of law is to mean anything, decisions as to what is necessary or expedient in this context cannot be left to the uncontrolled judgment of the executive [para 45].

[The Security Council] resolutions are the product of a body of which the executive is a member as the United Kingdom's representative. Conferring an unlimited discretion on the executive as how those resolutions, which it has a hand in making, are to be implemented seems to me to be wholly unacceptable. It conflicts with the basic rules that lie at the heart of our democracy [para 45].

In my opinion the rule of law requires that the actions of the Treasury in this context be subjected to judicial scrutiny [para 53].

the restrictions strike at the very heart of the individual's basic right to live his own life as he chooses [para 60]

This is a clear example of an attempt to adversely affect the basic rights of the citizen without the clear authority of Parliament [para 61]

Lord Phillips, President of the Supreme Court:

[UN Security Council Resolution 1373] nowhere requires, expressly or by implication, the freezing of the assets of those who are merely suspected of the criminal offences in question. Such a requirement would radically change the effect of the measures. Even if the test were that of reasonable suspicion, the result would almost inevitably be that some who were subjected to freezing orders were not guilty of the offences of which they were reasonably suspected. The consequences of a freezing order, not merely on the enjoyment of property, but upon the enjoyment of private and family life are dire. If imposed on reasonable suspicion they can last indefinitely, without the question of whether or not the suspicion is well-founded ever being subject to judicial determination [para 137].

Access to a court to protect one's rights is the foundation of the rule of law [para 146].

Nobody should conclude that the result of these appeals constitutes judicial interference with the will of Parliament. On the contrary it upholds the supremacy of Parliament in deciding whether or not measures should be imposed that affect the fundamental rights of those in this country [para 157].

Lord Brown:

The draconian nature of the regime imposed under these asset-freezing Orders can hardly be over-stated (para 192).