JUSTICE

Criminal Justice and human rights Update

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JUSTICE HUMAN RIGHTS CONFERENCE 2016

RECENT UK HUMAN RIGHTS CASES, A BRIEF DIGEST BY MAX HILL QC & KIRSTY BRIMELOW QC

R v INCEDAL [2016] EWCA Crim 11 2/2/16

- Media appeal against Crown Court's refusal to lift reporting restrictions. Followed earlier unsuccessful appeal [2015] 1 Cr.App.R4.
- (a) DPP to make decision on prosecution independently of the Executive.
- (b) The trial court, on DPP *in camera* application, to proceed on basis that open justice fundamental, but there are exceptions

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- (c) Court to determine where reason for departure from open justice based on reasons of national security. Could include where, if no prosecution, serious prejudice to administration of justice.
- (d) Duty of the Executive to give prosecution full cooperation where DPP has decided to continue prosecution

Incedal (3)

- (e) continuous review during trial necessary, could be with appointment of security cleared independent lawyer
- (f) Not satisfactory that a court considering *in camera* application not able to consult closed judgments in previous cases. Registrar of Criminal Appeals to investigate by working party.

R (Wang Yam) v CCC [2015] UKSC 76 16/12/15

- WY's evidence at trial ordered to be heard *in camera*.
- Trial judge had not been wrong to decline to allow WY to disclose the *in camera* material to ECHR for purpose of appeal.
- Art. 34 (state parties not to hinder individual petition)and Art.38 (states to furnish all necessary facilities) not incorporated in HRA 1998.

Wang Yam (2)

- Domestic principles according to which a domestic appellate court may have access to all of the materials available to a first instance court have no direct application for ECHR purposes.
- ECHR will not re-determine issues of national security, but will review domestic adjudication for fairness and thoroughness.

Wang Yam (3)

- A domestic court exercising a general discretion is not bound to have regard to international obligations, but may have regard if thought appropriate.
- Trial judge did consider Art 34 and 38, but did not consider it appropriate to relax *in camera* order to allow disclosure to ECHR.

James v DPP [2015] EWHC 3296 (Admin). 13/11/15

- Conviction under s14(5) Public Order Act 1986, for breach of condition imposed by police on a public assembly.
- Question of proportionality of decision to prosecute, in light of Art. 10 and 11. See *Bauer and others v DPP* [2013] EWHC 634 (Admin).
- Proportionality of a decision to prosecute not an issue for trial court, unless under abuse of process.

James (2)

- For some offences under POA 1986, rights (Arts 10,11) form part of the statutory defence eg defendant's conduct reasonable.
- In a case such as this, involving police officer's belief as to necessity of imposing condition on public assembly, proportionality for purposes of Art 10 and 11 could be raised through testing reasonableness of officers belief and approach.

R (Miranda) v SSHD [2016] 1 Cr.App.R.26 CA (Civ Div)

- True and dominant purpose for stopping claimant was to determine whether he appeared to be a terrorist (within s1 TACT 2000 definition), as permitted by Schedule 7.
- Fact of overlapping purpose of Security Service to ascertain nature of material did not mean power to stop not exercised for Schedule 7 purpose.

Miranda (2)

- On the facts, the stop did not violate Art.10, because it was prescribed by law, pursued a legitimate aim and was proportionate.
- When determining the proportionality of a decision taken by the police on national security grounds, the court should accord substantial deference to their expertise in assessing national security risk.

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- However, and in general, Schedule 7 is incompatible with Art 10 in relation to journalistic material.
- Availability of judicial review does not cure breach of Art 10 resulting from disclosure of confidential source/material.

Ali v UK [2016] 62 EHRR 7 30/6/15

- Transatlantic airline bombing plot.
- Partial verdicts at first trial. Virulent media reporting between trials. Convicted of major allegation at second trial.
- Application under Art 6(1) on basis of adverse publicity between trials.
- Consider *R v Hamza* [2007] 2 WLR 226.
- In the Court's assessment, a virulent press campaign can adversely affect fairness of trial.

Ali (2)

- However, it will be rare that prejudicial pre-trial publicity will make a fair trial at some future date impossible.
- Any members of the public exposed to (the reports) would not have known at that time that they would be involved in the subsequent retrial.
- Nothing to suggest that the jury could not be relied upon to follow instruction to try the case on the evidence alone.

Ali (3)

- The Court concludes that it has not been shown that the impugned publications were capable of influencing the jury to the point of prejudicing the outcome of the proceedings and rendering the trial unfair.
- No violation of Art 6(1).

Magee v UK [2016]62 EHRR 10

- 2009 arrests pursuant to section 41 TACT 2000 on suspicion of involvement in the murder of a police officer. Warrants of further detention.
- Para 36 of Schedule 8, compatibility with Art 5. Domestic judicial review led to finding that warrants of detention should be quashed for failure to review lawfulness of arrest, but Schedule 8 was compatible with Art 5.

Magee (2)

- Art 5(3) 'shall be brought promptly before a judge...'
- General principles (73) 'Art 5 is in the first rank of the fundamental rights...three strands run through, exhaustive nature of exceptions, repeated emphasis on lawfulness of detention, and importance of promptness or speediness of requisite judicial controls'.

Magee (3)

- Conclusion (105) 'the applicants were detained for 12 days, which was a relatively short period of time... They were at all times in the early stages of the deprivation of liberty...it was not necessary that any consideration be given to their conditional release during this period'.
- Absence of possibility of conditional release does not give rise to issues under Art 5(3). Held, no violation.

Da Silva v UK [2016] 63 EHRR 12

- The shooting of Jean Charles de Menezes, 22/7/05.
- Submission: investigation into the death fell short of the standard required by Art 2 because the authorities were precluded from considering the reasonableness of the (firearms) officers' belief that use of force was necessary, and the prosecutorial system prevented those responsible from being held accountable.

Da Silva (2)

- (238) 'it cannot be inferred...that Art 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence...the Court will grant substantial deference to the national courts in the choice of appropriate sanctions for homicide by state agents...nevertheless it must still exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed'

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- (244) test for use of lethal force as set out in *McCann*: honest and genuine belief that the use of force was necessary. (249) Coroner's test in this case held compatible.
- (282) having regard to the criminal proceedings as a whole, the applicant has not demonstrated that there existed any institutional deficiencies in the criminal justice or prosecutorial system giving rise to a procedural breach of Art 2.

Da Silva (4)

- Dissenting opinions (3) on failures of the investigation 'the death of an innocent person was not properly investigated in compliance with the Convention standards. The investigation carried out was not capable of leading to the establishment of individual criminal liability as required by the Convention'.
- Further claim under Art 3, that Mr de Menezes was subjected to ill-treatment, held inadmissible.

Dallas v UK [2016] 63 EHRR 13

- Article 7 case, brought by juror found in contempt of court for researching defendant's previous convictions online.
- 'No one shall be held guilty..on account of any act or admission which did not constitute a criminal offence at the time...'
- Domestic court applied a test of specific intent in relation to the deliberate disobedience of the judge's direction, rather than the creation of a risk of prejudice to the due administration of justice

Dallas (2)

- Held: (72) correct test for contempt required act creating a real risk of prejudice to due administration of justice, and an intention to create that risk. Divisional Court did not apply to the letter, but had not applied a lower threshold, therefore no breach of Art 7.

European Human Rights Law Review issue 2 2016

- P151. 'British air strikes against ISIS in Syria: legal issues under ECHR', by Michael Ramsden, Faculty of Law, Chinese University of Hong Kong.
- Relationship between international humanitarian law and European human rights law. Scope for absolute necessity standard in Art 2 to be adapted in light of circumstances pertaining to terrorist group operating in safe havens abroad.

EHR article (2)

- Air strikes have not arisen in context of armed conflict.
- To what extent is Art 2 enforcement framework capable of adaptation?
- ECHR has adapted absolute necessity standard where armed conflict or other public emergency exists.
- Unique challenge posed by a transnational terrorist group operating in a safe haven within a country unable or unwilling to prevent imminent threats to life...

ANY QUESTIONS

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Surveillance, Privacy, Freedom of Speech and National Security

Liberty, Amnesty Int. & Others vs. GCHQ
Oversight

Kirsty Brimelow QC
Doughty Street Chambers

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Edward Snowden, former contractor for the US National Security Agency ("NSA")

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Snowden's disclosures revealed, for the first time, the existence and scale of the following bulk interception programmes:

- TEMPORA – UK Government programme
- UPSTREAM – US Government programmes
- PRISM – US Government programme allowing access to communications from Apple, Facebook, Google etc.

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Various human rights NGOs complained that their privacy had been unlawfully invaded by:

- the Security Service (MI5)
- the Secret Intelligence Service (MI6)
- the Government Communications Headquarters (GCHQ)

Together the "Security Services"

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AMNESTY INTERNATIONAL PRIVACY INTERNATIONAL LIBERTY

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Investigatory Powers Tribunal (IPT)

- Established in 2000 by the Regulation of Investigatory Powers Act 2000 (RIPA). Only ruled against UK security and intelligence services for first time February 2015
- Judicial body, independent of British government, which hears complaints about surveillance by public bodies.
- No avenue to appeal, other than to take the case to the European Court of Human Rights

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[2014] UKIPTrib 13_77-H
IPT (June 2014 – December 2014)

- The *Prism issue* & the alleged Tempora interception operation / or *the s.8(4) issue*
- Alleged violations of Articles 8, 10 and 14 of the ECHR
- "Neither confirm nor deny" policy
- Public hearing in July 2014 followed by a closed hearing

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First IPT Judgment (5 December 2014)
[2014] UKIPTrib 13_77-H

- No violations of Articles 8 or 10 ECHR for soliciting, receiving, storing and transmitting private communications of UK residents obtained by US authorities via Prism and/or Upstream
- No violations of Articles 8 or 10 ECHR for intercepting private communications under ss8(4), 15 and 16 RIPA

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Second IPT Judgment (6 February 2015)
[2015] UKIPTrib 13_77-H

- During the first judgment, the rules and procedures governing intelligence sharing had been publicly clarified for the first time
- Second IPT ruling as to whether receiving bulk intercepted material from foreign intelligence agencies had been lawful up until the hearings for the first judgment.

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Second IPT Judgment (6 February 2015)

- Prior to the disclosures made, the regime governing the soliciting, receiving, storing and transmitting by UK authorities of private communications of individuals located in the UK, obtained by US authorities pursuant to Prism and/or Upstream, contravened Articles 8 or 10 ECHR.
- From the first judgment onwards, however, the regime complied with the said articles.

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Illegal retention GCHQ of Amnesty International's private communications

- In June and July 2015 the IPT addressed the issues whether there had been illegal interceptions by the UK authorities of private communications of the claimants to the case.
- IPT found that GCHQ had unlawfully retained data appertaining to Amnesty International;
- It made "no determination" on the complaints of Privacy International, Liberty and other NGOs involved

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Report of David Anderson QC (11 June 2015)

- "A Question of Trust"
- Calls for clear new laws
- Proposed new judicial review
- But also found that UK intelligence agencies should be allowed to retain intrusive powers to gather bulk communications data

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Reactions to Anderson's report

- Jo Glanville, director of English PEN, welcomed the report:

  "While we would have liked to see the recommendations go even further in relation to GCHQ's bulk collection of data, we welcome the recommendations for judicial authorisation and the call for a rigorous assessment before any further powers are given to the intelligence services in a revived snooper's charter."

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Proposed new legislation

- **Investigatory Powers Bill**
- Published in draft November 2015
- Revised and published 1 March 2016 – after taking into account concerns raised in three Parliamentary reports.

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- Part 1 title changed from "General Protections" to "General Privacy Protections".
- Bulk surveillance powers remain in the bill – with "bulk" warrants.
- Mass bulk equipment interference (hacking).
- No details of type of operations to justify use of bulk powers (issue raised by ISC)
- Restriction on intelligence sharing.
- ISPs to retain records for 12 months

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Oversight of the UK's security services by:

- The Interception Of Communications Commissioner's Office (IOCC)
- The Intelligence and Security Committee (ISC)
- The Investigatory Powers Tribunal (IPT)

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Oversight (1)
The Interception Of Communications Commissioner (IOCC)

- Responsible for keeping under review the interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces and other public authorities.
- Reports to the Prime Minister on a half-yearly basis

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Oversight (2)
The Intelligence and Security Committee (ISC)

- Parliamentary body tasked with providing oversight of the use of investigatory powers by the security and intelligence agencies.
- Members from both the House of Commons and the House of Lords
- Not responsible for reviewing ongoing and current operations conducted by the agencies.

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Recommendations by David Anderson QC to improve oversight

- Oversight mechanisms significantly criticised – Found to be neither transparent nor comprehensive
- New Independent Surveillance and Intelligence Commission (ISIC) should replace the offices of the three current Commissioners.
- ISIC should take over the judicial authorisation of all warrants through its Judicial Commissioners, who should be serving or retired senior judges
- IPT should have an expanded jurisdiction and the capacity to make declarations of incompatibility; and its rulings should be subject to appeal on points of law

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And finally from David Anderson on the bill

- And by providing that no one's communications can be intercepted without the approval of a judge, the Bill goes a long way to meet the cynics who see its vital powers as ripe for governmental abuse. Ministers deserve credit for devising a Bill that, in contrast to its 2012 predecessor, the so-called "snoopers' charter", is unlikely to blow up on the launch pad.

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And now

- Read Privacy International's Report
- The Question of Trust Remains Unanswered.
- http://www.politico.eu/wp-content/uploads/2016/09/PI_Lords.pdf

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- Application under Art 6(1) on basis of adverse publicity between trials.
- Consider *R v Hamza* [2007] 2 WLR 226.
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- The shooting of Jean Charles de Menezes, 22/7/05.
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Criminal law and Human rights update

Kirsty Brimelow QC (Doughty Street Chambers)
Max Hill QC (Red Lion Chambers)

Article 2 – effective investigation violation right to life

Armani Da Silva v the United Kingdom (ECtHR 30 March 2016): Mr Menezes was mistakenly identified as a terrorist suspect and shot dead on 22 July 2005 by two special firearms officers in London. The case was referred to the IPCC which made a series of operational recommendations and identified a number of possible offences that might have been committed by the police officers involved. Ultimately, however, it was decided not to press criminal or disciplinary charges against any individual police officer. Subsequently, a successful prosecution was brought against the police authority under the Health and Safety at Work Act 1974. The authority was ordered to pay a fine of 175,000 pounds sterling plus costs, but the officer in charge was absolved of any personal culpability for the events. The applicant complained about the decision not to prosecute any individuals in relation to Mr de Menezes' death, alleging a violation of Article 2 ECHR. In particular, the applicant complained that the investigating authorities were not able properly to assess whether the use of force was justified and that the investigation was incapable of identifying and – if appropriate – punishing those responsible. The Court found that it could not be said that the domestic authorities had failed to consider, in a manner compatible with the requirements of Article 2 ECHR, whether the use of force had been justified in the circumstances. The test for self-defence in England and Wales did not fall short of the standard that the person purporting to act in self-defence had an honest and genuine belief that the use of force was necessary and it could be said that it was subjectively reasonable. The Court furthermore found that the applicant had not demonstrated the existence of any "institutional deficiencies" in the criminal justice or prosecutorial system giving or capable of giving rise to a procedural breach of Article 2. In conclusion, it could not be said that the domestic authorities had failed to discharge the procedural obligations under Article 2 ECHR to conduct an effective investigation into the shooting of Mr de Menezes.

Article 3 – whole life sentences

Murray v the Netherlands (ECtHR 26 April 2016): – The imposition of a sentence of life imprisonment on an adult offender is not incompatible with Article 3 of the Convention, provided it is not grossly disproportionate and, from the date of imposition of the sentence, there is both a prospect of release and possibility of review. In line with existing comparative and international standards, the review should be guaranteed no later than twenty-five years after the imposition of the life sentence, with further periodic reviews thereafter, and should allow the domestic authorities to consider whether, in the course of the sentence, any changes in the life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds. This assessment must be based on rules having a sufficient degree of clarity and certainty and be based on objective, pre-established criteria, surrounded by sufficient procedural guarantees.

This Grand Chamber judgment develops the Court's case-law concerning the need for life sentences to be, notably, de facto reducible (Kafkaris v. Cyprus; Vinter and Others v. the United Kingdom; and, notably, Harakchiev and Tolumov v. Bulgaria). The Grand Chamber found that a prisoner's

rehabilitation must be programmed and facilitated from the outset for any review of a life sentence to be considered useful and for that life sentence to be considered de facto reducible. As to the present case, the Grand Chamber found that the treatment of the applicant's mental-health problems constituted, in practice, a precondition for him to have the possibility of progressing to rehabilitation and reducing the risk of reoffending. The lack of any treatment, and indeed the lack of any assessment of his treatment needs, meant therefore that neither the pardon nor later review processes were, in practice, capable of leading to a conclusion that he had made such significant progress that his continued detention would no longer serve any penological purpose. His sentence was not therefore de facto reducible and there had therefore been a violation of Article 3.

Article 5 – Detention of minors

Blokhin v Russia (ECtHR 23 March 2016): The applicant in this case was a minor who had not reached the age of criminal responsibility. He was placed in a juvenile detention centre. The authorities found that he had committed offences punishable under the Criminal Code. However, no criminal proceedings were initiated since he was below the statutory age of criminal responsibility. He was brought before a court, which ordered that he be placed in a temporary detention centre for minor offenders for a period of thirty days in order to "correct his behaviour" and to prevent his committing any further acts of delinquency. The Grand Chamber found, inter alia, a violation of Article 5 § 1.36 The Court found that the applicant's detention was not for the purpose of "educational supervision", that it was not therefore within the ambit of Article 5 § 1 (d) and, being otherwise not justified, was unlawful and a violation of Article 5 § 1.

In camera proceedings

Wang Yam v Central Criminal Court and another (Supreme Court, 16 December 2015): The entire defence case in the accused's trial was taking place *in camera* in the interests of national security and to protect the identity of a witness or other person. Wang was convicted of murder and burglary and sentenced to life imprisonment. Wang Yam lodged an application with the ECtHR and argued that he should be permitted to refer to the *in camera* material in his response to the UK's observations before the ECtHR. This was prohibited by Ousefley J. Wang was allowed to appeal directly to the Supreme Court on the question whether there is a power to prevent an individual from placing material before the ECtHR. And, if so, whether the power can be exercised where the domestic court is satisfied that it is not in the interests of state for the material to be made public even to the Strasbourg Court. The Supreme Court ruled that refusal to permit disclosure to the ECtHR does not constitute a breach of Article 34 ECHR. The *in camera* material formed part of Wang Yam's own defence and has been seen by both him and his legal representatives. Even if refusal to permit disclosure to the ECtHR breached an international obligation, English courts would not be obliged automatically to give effect to such obligation. The UK takes a dualist approach to international law. The decision-maker may take international law obligations into account but is not bound to do so.

Guardian News and Media Ltd v Incedal (Court of Appeal, 9 February 2016): Erol Incedal was subject to two trial on charges relating to terrorism. Parts of the trial took place in public, parts took place *in camera,* and during other parts of the trial accredited journalists were allowed to be present during *in camera* proceedings. Media organisations appealed against an order dismissing their application to publish material about the *in camera* proceedings. The appeal was dismissed. The Court held that, from the nature of the evidence, any public accountability for matters relating to the prosecution could not be achieved through the press in its function as "watchdog" of the public interest. The Court ruled that the presence of accredited journalists during significant parts of the trial made its management very much more difficult than in conventional cases where the trial was

conducted either in public or in camera in the absence of any representatives of the media. Courts should think long and hard before making similar orders in the future.

Article 8 – right to respect for private and family life

Sousa Goucha v Portugal (ECtHR 22 March 2016): The applicant, a well-known celebrity, alleged that he had been defamed during a television comedy show shortly after making a public announcement concerning his sexual orientation. The late-night show was intended to be humorous and included a quiz in which guests were asked to choose the best female television host from a list of names including the applicant's. The applicant's name was deemed to be the right answer. The applicant lodged a criminal complaint against the television company for defamation and insult, arguing that it had damaged his reputation by creating confusion between his gender and sexual orientation. The domestic courts found that a reasonable person would not have perceived the joke as defamatory because, even if it was in bad taste, it was not intended to criticise the sexual orientation of the applicant, a public figure. The joke referred to certain visible characteristics of the applicant which could be attributed to the female gender, and had been made in the context of a comedy show known for its playful and irreverent style. The criminal proceedings were therefore discontinued. The Court examined the application under Article 8 of the Convention, the main issue being whether, in the context of its positive obligations, the State had achieved a fair balance between the right to protection of reputation and the right to freedom of expression. Endorsing the approach adopted by the domestic authorities' in the instant case, the Court noted that in Nikowitz and Verlagsgruppe News GmbH v. Austria it had introduced the criterion of the reasonable reader in cases involving satire. The Court clarified the scope of its examination in cases relating to comedy shows, observing that the States enjoy a wide margin of appreciation when dealing with parody. Unlike the position in other cases concerning satirical forms of expression (see, for example, Alves da Silva v. Portugal, and Welsh and Silva Canha v. Portugal), the joke in the applicant's case had not been made in the context of a debate of public interest. The Court stated that in such circumstances an obligation could arise under Article 8 for the State to protect a person's reputation where the statement went beyond the limits of what was considered acceptable under Article 10.

Article 10 – Freedom of the press

Bédat v. Switzerland (ECtHR 29 March 2016): the central issue in this judgment was the balancing of a journalist's interest in publishing against the competing (private and public) interests protected by the secrecy of criminal investigations. The applicant, who was a journalist, was convicted and fined for publishing information obtained by a third party and passed to the applicant that was covered by the secrecy of criminal investigations in pending proceedings. The applicant argued his rights under Article 10 of the Convention had been violated. The Grand Chamber found no violation of Article 10 of the Convention. Whether an applicant is the journalist or the victim of impugned press coverage, the Court has consistently accorded equal respect to the competing Article 10 rights (the right to inform the public and the public's right to be informed) and Article 8 rights (private life), and it has applied the same margin of appreciation to the relevant balancing exercise. For the first time, the Court stated that the same approach is to be applied in cases, such as the present one, where the Article 10 rights of an applicant journalist are to be balanced against the presumed innocent) in the pending criminal proceedings about which information, covered by the secrecy of criminal investigations, had been disclosed. The Court listed the criteria to be applied when carrying out this balancing exercise between Article 10, on the one hand, and the public and private interests protected by the principle of the secrecy of criminal investigations, on the other. Those criteria were: how the applicant journalist came into possession of the secret documents; the content of the impugned article; the contribution of the article to a public debate; the influence of the article on the criminal proceedings; any infringement of an accused's private life; and the proportionality of

the penalty imposed. In commenting on the fourth criterion, the Court found that the article was clearly slanted against the accused. It is interesting to note that the Court considered that, published as it was during the investigation, the article risked influencing the outcome of the proceedings including the work of the investigating judges and of the trial court, irrespective of the composition of that court (professional judges or not). Moreover, the Court went on to make clear that the Government did not have to prove ex post facto actual influence on the proceedings: rather the risk of such influence could justify per se the adoption of protective measures such as rules preserving the secrecy of investigations. The Court concluded by approving the Federal Court's view that secret case-file elements had been discussed in the public sphere during the investigation and before the trial, out of context and in a manner liable to influence the investigating and trial judges.

Pinto Coelho v. Portugal (ECtHR 22 March 2016): This case concerned the unauthorised broadcasting of a report containing audio extracts from a court recording of a hearing. In the retransmission, the voices of the three judges sitting on the bench and of the witnesses were digitally altered. These extracts were followed by comments by the applicant, a journalist specialising in court cases, referring to a miscarriage of justice. The applicant was convicted of breaching the statutory prohibition on broadcasting audio-recordings of a hearing without permission from the court and ordered to pay a fine. The applicant complained of a breach of her right to freedom of expression. The interest of the case lies in the fact that it pitches competing interests against each other: on the one hand, the rights of the press to inform the public and of the public to be informed and, on the other, the right of trial witnesses to be heard and the need to ensure the proper administration of justice. The Court had regard to the determination of the superior courts of the member States of the Council of Europe to respond forcefully to the harmful pressure the media could put on civil parties and defendants and which was liable to undermine the presumption of innocence. Nevertheless, a number of factors swayed the balance in favour of finding a violation of Article 10 of the Convention. (i) The trial was already over when the report was broadcast. (ii) The hearing had been public and none of those concerned had used the remedy available to them for an infringement of their right to be heard. For the Court, the onus had primarily been on them to ensure respect for that right. (iii) Additionally, the voices of those taking part in the hearing had been distorted to prevent them from being identified. In this connection, it is noteworthy that the Court found that Article 10 § 2 of the Convention did not provide for restrictions on freedom of expression based on the right to be heard, as that right was not afforded the same protection as the right to reputation. It was unclear why the right to be heard ought to prevent the broadcasting of sound clips from a hearing held in public. In sum, the Government had not given sufficient reasons to justify the fine imposed on the applicant.

Investigatory Powers bill

The Investigatory Powers Bill was introduced to the House of Commons on 1 March 2016. The Bill introduces new powers for UK intelligence agencies and law enforcement for targeted interception of communications, bulk collection of communications data, and bulk interception communications, with the aim of preventing serious crime and other human rights violations. The Bill is currently undergoing legislative scrutiny. There are concerns that aspects of the Bill may violate the right to respect for private life, family life, home and correspondence in Article 8 ECHR. The right to freedom of expression in Article 10 ECHR and the right to a fair hearing in Article 6 ECHR are also relevant. The new legislation needs to be in force by 31 December 2016.