

Supreme Court dismisses Begum appeal on national security grounds



Today the UK Supreme Court gave judgment in ***R (Begum) v Secretary of State for the Home Department*** in a case which pits national security against natural justice.

The case concerns Shamima Begum who, at the age of 15, left the UK for Syria. Ms Begum married an ISIL fighter and aligned herself with the terrorist group. In 2019, the-then Home Secretary used an exceptional power, provided by section 40A of the British Nationality Act 1981, to strip Ms Begum of her British citizenship.

Now detained in a Syrian Democratic Forces detention camp, Ms Begum wishes to return to the UK and exercise her statutory right to appeal the decision to remove her citizenship. The Government has denied Ms Begum leave to enter the country to pursue that appeal. This case decides whether she can do so.

The Supreme Court held that Ms Begum cannot return to the UK to pursue her appeal against deprivation of her citizenship. It considered that the national security concerns raised by the Secretary of State outweigh her right to a fair and effective hearing. It further held that there was no evidence as to whether the national security concerns could be managed upon Ms Begum's arrival in the UK. As such, significant weight must be afforded to the Secretary of State's assessment of the national security concerns. Further, when an individual's right to a fair hearing comes into conflict with the requirements of national security, the right to a fair hearing will not necessarily prevail – it does not trump all other considerations. The result is that Ms Begum's appeal against the deprivation of her citizenship will be stayed until she can play an effective part in it, without the safety of the public being compromised. This was acknowledged by the President of the Supreme Court as "not a perfect solution".

In its intervention, JUSTICE submitted that the deprivation of citizenship and refusal of leave to enter are not limited to consideration of the statutory powers of the State, on the one hand, and statutory rights of the citizen, on the other. Instead, such decisions about deprivation of the right of abode and entry are grounded in ancient common law principles that reciprocally bind subject and State and may only be severed by way of judicial, rather than executive or legislative, action.

Whilst the Court did not determine the case on the principles raised in JUSTICE's submissions, it stated that it gave careful consideration to them and also did not reject the existence of such principles. Those principles may provide a further route of appeal for Ms Begum and the many other UK women and children who remain stranded in Syrian refugee camps.

JUSTICE's director, Andrea Coomber said:

We are disappointed that this judgment fails to discuss the importance of the procedural right for individuals to effectively participate in their own hearings, as well

as the constitutional rights of subjects, especially in relation to such a serious matter as deprivation of citizenship. The decision seems to suggest that the Secretary of State's assessment of the national security risk will always outweigh the right to a fair hearing, even when there are ways in which that risk could be ameliorated.

Notes to Editors

1. JUSTICE intervened by [written submission](#). Our intervention focussed on the origins of citizenship in the ancient common law of allegiance and its duty of protection. It considered the extent to which the Executive may frustrate that law without affording the longstanding principles of natural justice, including the protection of the laws of the State, access to the courts and the right to fair, meaningful and effective participation.
2. JUSTICE was represented pro bono by Felicity Gerry QC and Eamonn Kelly.
3. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. For more information, please visit www.justice.org.uk
4. Please direct queries to Jodie Blackstock, Legal Director at jblackstock@justice.org.uk