

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

CO/11360/2012

B E T W E E N

THE QUEEN on the application of FF

Claimant

-and-

DIRECTOR OF PUBLIC PROSECUTIONS

Defendant



-and-

EUROPEAN CENTER FOR CONSTITUTIONAL AND
HUMAN RIGHTS (ECCHR)

Interested Party

ORDER and STATEMENT OF REASONS

BEFORE Lord Justice Laws and Mr Justice Cranston

UPON hearing counsel for the Claimant and counsel for the Defendant

AND UPON the Defendant agreeing to inform the Metropolitan Police within fourteen days of the sealing of the order that, on the basis of the evidence filed in these proceedings, immunity should not be a bar to any investigation of the liability of Prince Nasser bin Hamad Al Khalifa in relation to his investigation for a criminal prosecution or his arrest

AND UPON the parties agreeing to the attached statement of reasons annexed hereto.

It is hereby ORDERED by CONSENT:

1. The decision of the Defendant that, on the basis of evidence filed in these proceedings, Prince Nasser bin Hamad Al Khalifa of the Kingdom of Bahrain would or might be entitled to immunity is quashed.
2. On the same basis it is declared that Prince Nasser is not entitled to immunity.

3. The Defendant agrees to pay the Claimant's reasonable costs of the proceedings up to 5 February 2014 and reasonable additional costs of negotiations in relation to the order and statement of reasons.
4. There be a detailed assessment of the Claimant's publicly funded costs in any event.

Dated this 7 day of October 2014

We consent to an order being made in the above terms.

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The Defendant

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.....
For European Centre for Constitutional and Human Rights
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The Interested Party

Dated: 8th October 2014

By the Court

B E T W E E N

THE QUEEN on the application of FF

Claimant

-and-

DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

-and-

EUROPEAN CENTER FOR CONSTITUTIONAL AND
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ANNEX TO ORDER DATED 7 OCTOBER 2014

STATEMENT OF REASONS FOR THE ORDER

1. On 5 July 2012, the European Center for Constitutional and Human Rights ("ECCHR"), Berlin, the Interested Party, contacted the Director of Public Prosecutions and submitted two dossiers of evidence said to implicate Prince Nasser bin Hamad Al Khalifa ("Prince Al Khalifa"), the Commander of the Royal Guard of the Kingdom of Bahrain, in acts of torture against detained protesters in April 2011 and requested an investigation with a view to the arrest and prosecution of Prince Al Khalifa.
2. On 5 July 2012, the Crown Prosecution Service's Deputy Head of Special Crime and Counter Terrorism Division ("the CPS Deputy Head of SCCTD") replied that criminal investigations are conducted by the Metropolitan Police and sought the ECCHR's permission to forward the dossier to the Metropolitan Police. The ECCHR gave its consent on 9 July 2012. On the same date the CPS Deputy Head of SCCTD confirmed that the dossier would be sent to the police.
3. On 3 August 2012, whilst Prince Al Khalifa was in the United Kingdom for the Olympic Games, the Claimant's lawyers contacted the Crown Prosecution Service asking the CPS to pass a message on to DC Bacon of the

Metropolitan Police stating that prosecution of the Prince was sought and asking DC Bacon to contact them to discuss.

4. On 3 August 2012, the CPS Deputy Head of SCCTD confirmed that a dossier of evidence had been received from the ECCHR and, with their permission, passed to the police, which is responsible for investigation. In the same reply, the Deputy Head of SCCTD took the view that Prince Al Khalifa would be entitled to immunity from arrest in the UK on the basis of both personal and functional immunity.
5. On 23 October 2012, these proceedings were commenced seeking a quashing of the decision of the DPP/CPS on immunity dated 3 August 2012 and the ongoing decision of the Director of Public Prosecution that Prince Al Khalifa would be entitled to immunity.
6. At the direction of the Court, these proceedings were served on Prince Al Khalifa and on the Kingdom of Bahrain. Neither Prince Al Khalifa nor the Kingdom of Bahrain notified the court that they wished to participate in the proceedings (the Kingdom of Bahrain notified the court by letter dated 2 April 2014 from its legal representatives that it did not wish to participate).
7. By letter dated 14 August 2014, the Crown Prosecution Service on behalf of the Director of Public Prosecutions informed the Claimant's solicitors that it no longer maintained that the Prince could be entitled to functional immunity (immunity *ratione materiae*). This is because the United Kingdom and the Kingdom of Bahrain are parties to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, as held by the Court of Appeal, the ratio of *Pinochet (3)* dictates that as between the States party to this Convention the operation of functional immunity (immunity *ratione materiae*) is excluded.
8. The Crown Prosecution Service on behalf of the Director of Public Prosecution also accepts that on the evidence before it Prince Al Khalifa would not benefit from personal immunity (immunity *ratione personae*).
9. The Crown Prosecution Service and Director of Public Prosecutions have accordingly accepted that consent to the issue of an arrest warrant under s153 of the Police and Social Responsibility Act 2011 would not be denied solely on grounds of functional immunity (immunity *ratione materiae*) or personal immunity (immunity *ratione personae*) on the basis of the evidence filed in these proceedings.
10. Further, in the light of the Claimant's intention to submit further evidence to the police (who are responsible for investigating the allegations), the Crown Prosecution Service has agreed to state to the police its view that immunity should not be a bar to any such investigation on the evidence currently available.
11. The Crown Prosecution Service continues to maintain that these proceedings are academic as it claims that the police decided not to conduct an investigation on the basis of the dossier of evidence submitted to it. The

Claimant by contrast maintains that the police position has been influenced by the position of the CPS that Prince Al Khalifa benefits from immunity, that circumstances have changed since the police decision including in respect of new evidence not yet provided to the police, and that the CPS's position would have precluded it from consenting to an arrest warrant in any event. This statement of reasons is without prejudice to these rival contentions which are relevant to the issue of costs.

12. For these reasons, the parties consent to the attached order.