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3rd Floor; 87 Vauxhall Walk; London SE11 5HJ; United Kingdom
Tel. + 44 (0) 20 7793 1777 Fax: + 44 (0) 20 7793 1719
Email: info@redress.org Web URL: www.redress.org

R v ZARDAD [CASE COMMENT]

On 18 July 2005 Afghan warlord Faryadi Sarwar Zardad (41) was found guilty in the London Central Criminal Court (Old Bailey) of conspiring to torture and take hostages in Afghanistan in the early nineties. The following day he was sentenced to twenty years imprisonment. It is the first successful UK prosecution for torture committed abroad, and only the third time that that we know of where a person has been detained in the UK pursuant to Section 134 of the 1988 Criminal Justice Act. Zardad was first brought to trial in 2004 but the jury failed to agree a verdict, and he was subsequently retried this year. The two legal rulings below on important points relating to jurisdiction were made in the course of the first trial and have now become available. Obviously they applied in the second trial as well.

The judgment of 7 April 2004 deals in detail with and dismisses the defence submission that Zardad was not "a public official or a person acting in an official capacity" in terms of Section 134 (1) of the Criminal Justice Act 1988 (the torture section). The judge confirms that it is the first case of its kind under English Law. He finds that although Zardad was not a de jure public official, he was to be treated as a public official on a de facto basis. The judge examines a considerable amount of what he calls "international material" to reach his decision, namely the UN Committee Against Torture decisions in *Elmi v Australia* and *HMHI v Australia*, as well as the ITCY case of *Furundzija* and the USA case of *Kadic v Karadzic*. The second part of this judgment deals with the admissibility of video identification procedures, and again the judge ruled in favour of the Crown (the prosecution) that the evidence was not to be excluded.

The judgment of 5 October 2004 deals with the interpretation of the Taking of Hostages Act 1982, passed in the UK to give effect to the International Convention Against the Taking of Hostages 1979. In closely argued submissions the defence argued that a proper reading of the said Convention, which Convention (Article 12) makes reference to the Geneva Conventions of 1949 and the Additional Protocols, meant that the 1982 Act doesn't apply to hostage taking during an internal armed conflict, as opposed to an international armed conflict. However, the judge ruled that there is no power or duty in English law to prosecute or hand over a hostage taker in an internal armed conflict under the 1949 Geneva Conventions and Additional Protocols: such an accused can be tried under the 1982 Act. In other words the Crown was justified in proceeding under the 1982 Act and not under UK's Geneva Conventions Act 1957.

Both these judgments are worthy of detailed examination: the above comments are only a summary of the most important aspects. Given the precedent-making nature of the case it is expected to be appealed.