

**IN THE CENTRAL CRIMINAL COURT**

Date: 05/10/2004

**Before :**

**THE HONOURABLE MR JUSTICE TREACY**

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**Between :**

**R**

**- v -**

**ZARDAD**

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**Mr James Lewis QC for the Crown  
Mr Anthony Jennings QC for the Defendant**

Hearing dates: 9/10 September 2004

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**Ruling on the Taking of Hostages Act 1982**

**The Honourable Mr Justice Treacy :**

**Ruling on the Taking of Hostages Act 1982**

1. The Defence submits that the Taking of Hostages Act 1982, which is represented in the indictment by substantive and conspiracy charges, upon its proper construction precludes a prosecution for any act or omission which would constitute the offence of hostage taking committed in the course of an internal armed conflict (as opposed to an international armed conflict).
2. The argument runs as follows:
  - i) The 1982 Act was passed to give effect to the International Convention against the Taking of Hostages 1979.
  - ii) English law should interpret the Act in a way which is consistent with the terms of an international treaty incorporated into domestic law by the Act.
  - iii) Article 12 of the 1979 Convention provides:

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims on the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1,

paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

- iv) The evidence shows that Zardad's alleged hostage-taking was committed in the course of an internal armed conflict of a type recognised in the 1949 Geneva Conventions and the Protocols thereto.
  - v) Accordingly the type of hostage-taking alleged in this case is not prohibited by, and is not amenable to the jurisdiction of an English court under the Taking of Hostages Act 1982 since it is excepted from the Convention by Article 12.
3. The Crown responds in two ways:
- i) By arguing that the court cannot look beyond the provisions of sections 1 and 2 of the Act which are clear and unambiguous.
  - ii) If it is permissible to look beyond sections 1 and 2 and to consider the terms of Article 12, its proper interpretation does not preclude a prosecution.
4. The Crown's first argument submits that since sections 1 and 2 are clear and unambiguous, I should only look at them to see if the alleged crimes come

within their ambit. On this approach the court plainly has jurisdiction to try Zardad's alleged crimes of hostage taking.

5. I reject this approach as far too narrow. I consider that I may look to the long title to ascertain the context in which the legislation was enacted. This is necessary so that I may give legal meaning to the statute, that is, the meaning which corresponds to the legislator's intention. In this way I can apply the informed interpretation rule so as to apply the common law inference that the legislator intended the wording of the enactment to be given a fully informed, rather than a purely literal interpretation. It is not necessary for me first to conclude that there is ambiguity or vagueness in the wording. (See Halsbury's Laws of England 4<sup>th</sup> Edition (Reissue) Paragraph 1414).
6. The long title states "This Act implements the International Convention against the Taking of Hostages". It plainly indicates that the legal meaning to be attributed to s.1 of the 1982 Act is to be construed in the context of the 1979 Convention.
7. The long title represents a direct enactment of the Convention in the terminology adopted by the Editors of Halsbury's Laws and Bennion on Statutory Interpretation, and as such there is a presumption that English law will give effect to a meaning of the legislation consistent with the treaty or Convention. See also *Garland v British Rail* (1983) 2 A.C. 751 per Lord Diplock at 771A to E.
8. I therefore reject the Crown's first submission and conclude that I am free to determine the matter at issue by considering Article 12 and other relevant provisions.

9. The Crown's second argument is that the Defence has misconstrued Article 12. It does not operate to exclude the type of hostage taking alleged to have been committed Zardad from prosecution in this country.
10. The submission is that for Article 12 to operate in Zardad's favour, two preconditions must be satisfied:
  - i) The hostage taking alleged must come within the Geneva Conventions or Additional Protocols.
  - ii) The UK must be bound under the Geneva Conventions to prosecute or hand over the hostage taker.
11. The Crown acknowledges for the purpose of their submission that precondition (1) is satisfied. Hostage taking in an internal armed conflict is covered by the Geneva Conventions or Additional Protocols. (See Common Article 3 of the Geneva Conventions and Additional Protocol II).
12. The nub of the Crown's argument relates to precondition (2). It submits that this precondition is not satisfied. This is because it says that, in the case of internal armed conflict, there is no obligation to prosecute in English law for breach of the Geneva Conventions by hostage taking.
13. The Crown relies on the Geneva Conventions Act 1957 and asserts that jurisdiction to prosecute under the Geneva Convention is restricted to a grave breach of one of the four scheduled conventions on the first protocol. Mr Lewis QC took me through the relevant conventions and articles to demonstrate that, for example, by reference to Geneva Convention I of 1949 (Articles 3, 49 and 50), hostage taking in the course of internal armed conflict

is not included as a “grave breach”. Moreover, The Geneva Conventions scheme itself, relating to the obligation of states to prosecute, applies only to crimes committed in the course of an international armed conflict. Further, Additional Protocol II has not been the subject of statutory prohibition in English law. Since a treaty is not self-executing in English law (see *Fothergill v Monarch Airlines Ltd* (1981) AC 251 per Lord Wilberforce at 271), the necessary incorporation to make a breach of Additional Protocol II a crime in England has not occurred. See also the discussion in the recent decision of the Court of Appeal in *R v Jones and others* (2004) EWCA Crim 1981.

14. Reference was also made to Paragraphs 79 to 83 of the decision of the Appeals Chamber of the International Tribunal for the Territory of Former Yugoslavia in the case of *Tadic*. (Decision of 2 October 1995). There the Appeals Chamber had to consider a similar point as to whether grave breaches provisions of the International Tribunal Statute applied to armed conflicts of a non-international character. It held that they did not.
15. I am satisfied that the Crown’s analysis is correct for the reasons advanced by it. It follows, then, that the second precondition in relation to Article 12 is not satisfied (see Paragraph 10 above). 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 or the Additional Protocols thereto. Accordingly the exception contended for by the Defence by reason of Article 12 does not apply.
16. There was a subsidiary submission that I should regard the 1979 Convention as relating to the prosecution of hostage takers in connection with international terrorism. True it is that part of the preamble to articles of the Convention

refers to the necessity of adopting “effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism”. However, the language of the articles themselves contains no limitation to hostage-taking in the context of international terrorism. The preamble itself contains a number of recitations which set out a variety of desirable objectives or principles prior to setting out what has in fact been agreed. Of arguably greater weight is the preceding section of the preamble which recites “Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited”.

Whilst no doubt the Convention and thus the 1982 Act are apt to enable the prosecution of international terrorists who take hostages, I do not consider that the Convention or the Act on a correct interpretation are confined solely to their activities.

17. I am therefore satisfied that there is jurisdiction in this court to try the accused Zardad for the substantive offence of hostage taking or, (as the Crown has elected), conspiracy to commit that offence.
18. I should add that at the end of legal argument I raised with counsel the appropriateness of making this ruling under s31 of the Criminal Procedure and Investigations Act 1996, given the late stage at which this matter had been argued and the proximity of the trial for which very expensive and substantial logistical arrangements have been made. In the circumstances neither side demurred from the proposition that I should not rule under s.31, but should

rule under s.40 CPIA 1996. This ruling therefore is made under that section of the Act.

19. Mr Jennings QC made the further submission that I should, in the event of rejecting his argument in relation to the 1982 Act, invite the Attorney General to reconsider the appropriateness of granting his consent to a prosecution under the 1982 Act. This submission was predicated upon the assumption that the Attorney General had not given proper consideration to the relevant applicable law. In the light of this judgment I see no basis for concluding that the Attorney General did not approach his decision in the correct manner, particularly when Mr Lewis QC informed me that this point had been considered prior to prosecution. Accordingly I shall make no invitation to the Attorney General.