



21 March 2018

PRESS SUMMARY

**In the matter of an application by Kevin Maguire for Judicial Review (Northern Ireland)
[2018] UKSC 17
*On appeal from [2015] NIQB 4***

JUSTICES: Lord Kerr, Lord Reed, Lord Hughes, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

The appellant was a defendant in criminal proceedings in the Crown Court in Belfast. A legal aid certificate entitled him to public funding to instruct a solicitor and two counsel to appear on his behalf in those proceedings. During his first trial, he was represented by a barrister, Mark Barlow (described as “leading junior counsel”) and a solicitor-advocate, Clive Neville. The jury were unable to reach a verdict and they were discharged. The appellant was tried again. He again wished to have Mr Barlow as lead counsel. In the meantime, however, Mr Barlow had been disciplined by the Bar Council of Northern Ireland (the respondent in these proceedings) on the basis that where a certificate had been granted for two counsel, unless there were exceptional circumstances meaning that a senior counsel was not available, he could not act as leading counsel. Mr Barlow therefore informed the appellant that he could not act as leading counsel.

The appellant claimed that if Mr Barlow was not permitted to appear as his leading counsel, this would constitute a violation of his rights under article 6 of the European Convention on Human Rights (ECHR). The respondent Bar Council rejected this claim. The appellant’s re-trial proceeded and he was acquitted on seven counts, with the jury failing to reach a verdict on the other four counts. The prosecution indicated that it does not propose that the appellant be tried again on the counts on which the jury failed to agree.

The appellant applied for judicial review of the Bar Council’s decision on the basis that it “impeded” his choice of lead counsel and therefore violated his right under article 6 ECHR. He asserted that his right to choose counsel was limited only by the interests of justice test within article 6.3 ECHR. The Divisional Court dismissed his application.

The issue was whether, in cases where public funding for two counsel has been granted and where the accused wishes to retain a particular junior counsel, the requirement of the Bar Council that he must instruct an available senior counsel or proceed with junior counsel alone is not compatible with the accused’s right under article 6.3 to defend himself through legal assistance of his own choosing.

JUDGMENT

The Supreme Court dismisses the appeal. Lord Kerr gives the judgment with which all the other Justices agree.

REASONS FOR THE JUDGMENT

Article 6 ECHR provides the right to a fair trial. The relevant provision is article 6.3(c), which states that every person charged with a criminal offence shall have the right to defend himself in person or through legal assistance of his own choosing. The appellant argued that this entitled him to choose which lawyers could defend him, unless the Bar Council could show that the refusal was justified [18-21].

The court examined the relevant case law of the European Court of Human Rights, which emphasises adequacy of representation over freedom of choice as to the identity of counsel. The fundamental basis of the right guaranteed by article 6.3(c) is that the legal representation should be conducive to a fair trial, rather than conferring complete freedom to an individual defendant to choose the lawyer by whom to be represented [28]. A defendant does not have the right to decide in what manner his defence should be assured – the right is to be represented by sufficiently experienced counsel of one’s choice, but the role to be played by that counsel cannot be dictated by the defendant [30].

In the present case, the appellant has not advanced any grounds why Mr Barlow should be designated as leading counsel so that his rights of defence would be assured. As the respondent has pointed out, Mr Barlow could continue to act for Mr Maguire but as junior counsel, either with senior counsel, or, if senior counsel was not available, alone. Mr Maguire was not deprived of the services of Mr Barlow by operation of the Bar Council code of conduct. The deprivation, if there was one, was the denial of an enhanced payment to Mr Barlow acting as “leading counsel” [32].

The exercise involved here is one of the courts deciding what the interests of justice require, not whether an interference with an individual’s Article 6 right has been justified. Of course, the wishes of a defendant may be pertinent to the question of where the interests of justice lie but that is not because they have an intrinsic value [36]. It is clear from the relevant authorities that the essence of the right to choose one’s counsel lies in the contribution that the exercise of that right makes to the achievement of the ultimate goal of a fair trial. It is not an autonomous right which falls to be considered outside that context [38].

Article 6 does not give a defendant the right to demand that he have counsel of his choice at public expense, independently of the requirements of the interests of justice. So far from impinging on the appellant’s rights under article 6.3(c), the relevant provision in the Bar’s code of conduct is designed to uphold and vindicate them [44].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>