



Powers to stop, search and question passengers in the UK in 2011 lacked sufficient legal safeguards

In today's **Chamber** judgment¹ in the case of [Beghal v. the United Kingdom](#) (application no. 4755/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the use of counter-terrorism legislation giving immigration officers the power to stop, search and question passengers at ports, airports and international rail terminals. The applicant, Sylvie Beghal, had been stopped and questioned at East Midlands Airport in 2011.

The Court found that the legislation in force at that time had not been sufficiently circumscribed nor were there adequate legal safeguards against abuse. In particular, people could be subjected to examination for up to nine hours and compelled to answer questions, without being formally detained or having access to a lawyer.

In reaching that conclusion the Court did not consider amendments since made to the legislation. In particular, as of 2014, border officials have been required to take a person into detention if they wish to examine him or her for longer than an hour, to only commence questioning after the arrival of a solicitor, and to release those being questioned after six hours.

No award of damages was made to the applicant as the Court considered that the finding of a violation was sufficient.

Principal facts

The applicant, Sylvie Beghal, is a French national who was born in 1969 and lives in Leicester (United Kingdom).

On 4 January 2011 Mrs Beghal arrived at East Midlands Airport following a visit to her husband, who was in prison in France for terrorism offences. Her flight landed at 8.05pm.

She was stopped under counter-terrorism legislation, namely Schedule 7 of the Terrorism Act 2000, giving police and immigration officers the power to stop, search and question passengers at ports, airports and international rail terminals. The legislation does not require prior authorisation and the power to stop and question may be exercised without suspicion of involvement in terrorism.

Mrs Beghal was told by border officials that she was not under arrest and that they did not suspect her of being a terrorist, but that they needed to speak to her to establish if she might be "a person concerned in the commission, preparation or instigation of acts of terrorism".

After being given time to pray, she was searched, allowed to speak with her lawyer by telephone and then taken to an examination room where she was questioned for about 30 minutes. She refused to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

answer questions without her lawyer present. She was told that she was “free to go” at around 10 p.m.

She was subsequently charged with, in particular, wilfully failing to comply with a duty under Schedule 7. She pleaded guilty in December 2011 and was conditionally discharged.

She challenged the powers given to the police under Schedule 7 before both the High Court and the Supreme Court, alleging a violation of her rights under the European Convention. However, the national courts found in particular that the Schedule 7 powers were “in accordance with the law” and proportionate. In reaching this conclusion, the Supreme Court considered the law as it stood on the date of its examination and therefore took into account amendments to the legislation which had been made in 2014 by the Anti-Social Behaviour, Crime and Policing Act 2014 and the updated Code of Practice. Those amendments included requiring examining officers to take a person into detention if they wished to examine him or her for longer than an hour, to only commence questioning after the arrival of a solicitor, and to release those being questioned after six hours.

Complaints, procedure and composition of the Court

Ms Beghal alleged that the police powers under Schedule 7 of the counter-terrorism legislation had breached her rights under Article 5 (right to liberty and security), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 14 January 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
 Krzysztof **Wojtyczek** (Poland),
 Armen **Harutyunyan** (Armenia),
 Pauliine **Koskelo** (Finland),
 Tim **Eicke** (the United Kingdom),
 Jovan **Ilievski** (North Macedonia),
 Gilberto **Felici** (San Marino),

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Government conceded, and the Court therefore accepted, that there had been an interference with the applicant’s right to respect for her private and family life.

The Court went on to examine whether the scheme had contained sufficient safeguards to protect the applicant against arbitrary interference at the time she had been stopped at East Midlands Airport.

It considered that the scope of the Schedule 7 powers and the discretion given to examining officers to exercise them had been broad. In particular, the powers had been permanently applied at all ports and border controls and border officials had not been required to demonstrate that they had a reasonable suspicion that a person had been involved in terrorism.

The wide scope of the powers and the absence of a requirement of “reasonable suspicion” did not in themselves though run contrary to the principle of legality, bearing in mind the very real threat of

international terrorism currently faced by Contracting States. Indeed, there was clear evidence² that the Schedule 7 powers had been of real value in protecting national security and had not, in fact, been abused. In 2011, for example, only 0.03% of passengers travelling through ports had been examined under Schedule 7.

However, there were other factors which meant that the legislation had not been sufficiently circumscribed nor were there adequate legal safeguards against abuse in 2011. In particular, people could be subjected to examination for up to nine hours and compelled to answer questions, without being formally detained or having access to a lawyer. Furthermore, the possibility to seek judicial review of the exercise of the Schedule 7 powers was limited because the border official was not obliged to show “reasonable suspicion”.

Taking into account those insufficient safeguards, considered together with the absence of any requirement of “reasonable suspicion”, the Court found that at the time the applicant had been stopped the Schedule 7 powers had not been “in accordance with the law”. It followed that there had been a violation of Article 8 of the Convention.

In reaching that conclusion the Court – unlike the Supreme Court – did not consider the amendments to the legislation in 2014 by the Anti-Social Behaviour, Crime and Policing Act 2014 and the updated Code of Practice.

Nor had the Court examined the power to detain under Schedule 7, which had the potential to result in a much more significant interference with a person’s rights under the Convention.

Article 5 (right to liberty and security)

The Court considered that there was no need to examine the applicant’s complaint under Article 5 as it was based on the same facts as her Article 8 complaint.

Article 6 (right to a fair trial)

The applicant argued that the exercise of coercive police powers to compel her to provide answers that might have been incriminating, without any assurance that her answers would not be used against her in a criminal trial, had breached her Article 6 rights.

The Court, however, found that the applicant had neither been arrested nor charged with any criminal offence. The mere fact that she had been selected for examination could not be understood as meaning that she had been suspected of involvement in any criminal offence. On the contrary, police officers had explicitly told her that she was not under arrest and that the police did not suspect her of being a terrorist.

The Court therefore considered that the applicant’s examination under the Schedule 7 scheme could not engage Article 6 of the Convention and rejected that part of her complaint as inadmissible.

Article 41 (just satisfaction)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant. It awarded 25,000 euros in respect of costs and expenses, to be paid to the applicant’s lawyer.

The judgment is available only in English.

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² According to a 2011 report drawn up by the Independent Reviewer of Terrorism Legislation, intelligence gathered during Schedule 7 examinations contributed to a “rich picture of the terrorist threat” and could disrupt and deter terrorists’ plans.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.