

In The Supreme Court of the United Kingdom

**ON APPEAL FROM
HER MAJESTY'S COURT OF APPEAL
(ENGLAND AND WALES)**

BETWEEN:

**THE QUEEN
(on the application of)
RACHID NOUAZLI**

Appellant

-and-

**SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

SUMMARY OF APPELLANT'S CHALLENGE

This summary is supplied at the request of Lord Carnwath on the first day of the hearing. All of the points pleaded in the Appellant's printed case and two Notes are maintained.

Equality / discrimination (applicable to Regulation 24(1) only)

1. Regulation 24(1) EEA Regulations 2006 confers a power to administratively detain an EEA national or his family member who has committed a criminal offence, for which he has received a sentence of less than 12 months, pending a decision to deport (and even if he has acquired a right of permanent residence). *Ceteris paribus*, a third country national exercising no EU law rights is not liable to such detention (Appellant's Printed case §§5-7, see also Appellant's *Note 2 Concerning Statutory and Factual Context* §§4-8; 14-15). This is discrimination on status grounds (beneficiary of the Citizens Directive/ immigration status) and breaches:
 - (a) Article 21(1) of the Charter of Fundamental Rights (*Appellant's printed case* §§37-41; see also *Appellant's Note accompanying Supplementary Authorities* §§9-19);
 - (b) The general principle of equality (*Appellant's printed case* §§46-50; see also *Appellant's Note accompanying Supplementary Authorities* §14-19); and
 - (c) The common law principle of equality (*Appellant's printed case* §§59-63) which applies *a fortiori* in the context of executive deprivation of liberty.
2. Regulation 24(1) further discriminates on grounds of nationality contrary to Article 18 TFEU and Article 24(1) Citizens Directive in that it subjects the French wife of a third country national to a detriment not applicable to the British wife of a third country national. The former's husband is liable to detention before a decision to deport in circumstances in which the latter's is not (*Appellant's printed case* §§29-36; see also *Appellant's Note accompanying Supplementary Authorities* §§4-8).

Proportionality - Points applicable to Regulation 24(1) only

3. EU law applies a necessity test to the detention of beneficiaries of the Citizens Directive (*Appellant's printed case* §§ 67-71; see also *Appellant's Note accompanying Supplementary Authorities* §30). The Regulation 24(1) power cannot be shown to be necessary because:
 - (a) An equally or more dangerous third country national who is not a beneficiary of the Citizens Directive is not subject to detention. (*Appellant's printed case* §§ 67 (a));
 - (b) The Respondent has not shown that a need arose leading to the 1 June 2009 introduction of the detention power, where none had existed for the preceding 40 years (*Appellant's printed case* §§ 67 (b));
 - (c) The Secretary of State could complete her deportation considerations during the criminal custodial term as under Immigration Act 1971 cases (*Appellant's printed case* §§ 67 (c)); and
 - (d) The pre-decision detention power is without express limit of time (*Appellant's printed case* §§ 67 (d)).
4. Regulation 24(1) is disproportionate because, being discriminatory, the measure is inappropriate to secure the objective pursued (*Appellant's printed case* §§75-79).
5. No evidence of objective justification has been offered (*Appellant's printed case* §§80-81).

Legal certainty, proportionality and time limits in EU law– points applicable to Regulation 24(3) as well as Regulation 24(1)

6. The lack of mandatory time limits in detention under Regulation 24
 - (a) violates the requirements of legal certainty in EU law. The 'law' is not accessible, precise, or foreseeable in its consequences. (*Appellant's printed case* §§89-103).
 - (b) violates the requirements of proportionality (necessity) in EU law (see §3 above) in that the less coercive measure of detention subject to time limits is available (*Appellant's printed case* §104).
7. The *Hardial Singh* principles are necessary but not sufficient (*Appellant's printed case* §106-107; see also *Appellant's Note accompanying Supplementary Authorities* §§32-33).

Further transposition flaws - points applicable to both Regulation 24(1) and 24(3)

8. The detention powers of Regulation 24 fail to properly transpose the safeguards of the Citizens Directive for three further reasons:
 - (a) On their face, the EEA Regulations 2006 do not apply the Regulation 21 safeguards to detention decisions at all (*Appellant's printed case* §110; 112(a));
 - (b) If Regulation 2 is read down to include detention decisions among those EEA decisions to which Regulation 21 applies, then not only the Article 27, but also the Article 28 Citizens Directive safeguards apply to detention under Regulation 24 (since Regulation 21 deals with both compendiously (*Appellant's printed case* §110; 112(b)); and
 - (c) For a detention power to comply with Article 27 Citizens Directive, *inter alia*, the exercise of the power must require that 'the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society'. A test of 'reasonable grounds for suspecting' in Regulation 24(1) falls far below that threshold (*Appellant's printed case* §85).