Case No: C5/2008/0276

Neutral Citation Number: [2008] EWCA Civ 1192
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AA/08922/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 19th June 2008

Before:

LORD JUSTICE PILL
LORD JUSTICE HOOPER
and
LORD JUSTICE MOSES

- -

Between:

SX (ALBANIA)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Mr J Doerfel (instructed by Clore & Co Solicitors) appeared on behalf of the **Appellant**.

Ms P Hoskins (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment(Draft for Approval)

Lord Justice Pill:

1. This is an appeal against the judgment of the Asylum and Immigration Tribunal dated 31 October 2007 by which the appeal of SX (Albania) ("the Appellant") against the decision of the Secretary of State, on 17 July 2006, not to grant him asylum was dismissed. SX is a citizen of Albania, and entered the United Kingdom hidden in a lorry on 30 June 2006. He claimed asylum on 4 July 2006.

2. The appellant arrived in the United Kingdom minus a hand he claimed to have lost in 2002 when he had been attacked with a grenade. There was a blood feud in Albania between rival gangs, the Dedja and the Kola. He claimed to have been kidnapped by the Kola in 1997 when his cousin Alfred, a Dedja member, was murdered. The appellant was targeted by the Dedja gang, who held him responsible for the death. There was a further bomb attack on his home in 2006. The Albanian authorities were unwilling to protect him, he claimed, partly due to his mother being of Roma ethnicity. The appellant and his family were harassed by the police. If he returned to Albania he would be at risk of further harm at the hands of criminal gangs and of further ill-treatment by the Albanian police.

3. The appellant's application for asylum already has a lengthy history. His appeal against the original decision was dismissed on 16 November 2006. A reconsideration was ordered on 20 December 2006 on the ground that there had been a structural failure in the first tribunal's assessment of credibility, in particular in dealing with medical evidence about the lost hand.

4. The Secretary of State's decision letter of 17 July 2006 was extremely long and dealt systematically and in detail with the appellant's evidence of events in Albania and the basis of the claim to asylum. It was not accepted that the appellant was at risk of persecution in Albania due to his mixed ethnicity. The phenomenon of blood feuds in Albania was considered in considerable detail, as was the willingness of the Albanian authorities to confront the phenomenon. It was not accepted that the authorities in Albania were unwilling or unable to offer effective protection. It concluded that internal relocation was, in any event, a viable option for the appellant. The claim to asylum was rejected, as was a claim to protection under the European Convention on Human Rights.

5. On its first consideration of the case, the tribunal considered the objective background material in considerable detail. The position of Roma in Albania had been considered and assessed in the case of XM (Albania, Victims of Extortion, Sufficiency of Protection) Albania [2004] UKIAT 00178, together with the ability and willingness of the government of Albania to provide adequate protection. Blood feuds had been considered by the tribunal in the case of TB (Blood Feuds -- Relevant Risk Factors) Albania

CG [2004] UKIAT 00158, in which a series of questions which should be asked by a tribunal in cases such as the present were suggested.

6. The first tribunal found the appellant to be a "most unsatisfactory witness". The conclusion was stated at paragraph 48:

> "In summary therefore I find that the appellant has failed to establish on the burden of proof required of him that he is at risk on return on account of his claimed ethnicity. I find that the appellant has not claimed (nor established on the evidence before me) that he is at risk on account of a blood feud and I find the appellant has not established on the burden of proof required of him that he is at risk on return on account of the malign intentions of the Dedja gang. I find the appellant has not established, on the burden of proof required of him that he is a witness of the truth and that his account is credible.
>
> 49… His claim does not arise out of race, religion, membership of a particular social group, political opinion or nationality."

7. It had been an issue at the first tribunal as to whether the blood feud aspect of the claim created a fear of persecution on a Convention ground. At the hearing now under consideration, and after a brief setting-out of the appellant's claim, the respondent's position and the background material referred to, the determination included a section entitled "Assessment of Credibility and Findings of Fact". It begins with the statement, "I make a finding of credibility adverse to the appellant." That is followed by the statement that in making that finding the available evidence has been considered "in the round". Following that initial finding, this section of the determination, which is a long one, includes a mixture of references to background information, to the evidence of the appellant, to alleged inconsistencies and allegedly implausible aspects of his central accounts. It includes in the course of the section the comments of the tribunal. The section concludes with the finding:

> "For all the above reasons, I concluded that the appellant had not given a credible account of his claimed difficulties in Albania, either as a result of involvement in criminal gangs or indeed as a result of his Roma ethnicity."

8. Earlier in the section, the Tribunal stated at paragraph 7.21, in dealing with the injury to the hand:

> "Nonetheless it does not appear to me that whilst there is now very powerful evidence concerning the

> source of the appellant's injuries, there necessarily follows a finding that they were caused in the manner he has described, given the credibility issues I have referred to within this determination. The medical professionals elsewhere in the report simply appear to recount the version of events given to them by the appellant and it would appear that each of the examining doctors only saw him on one occasion."

That last statement is left in the air. It does not emerge what importance or relevance the Tribunal attached to it.

9. It is clear that, in the view of the Tribunal, the case turned on credibility and on credibility alone. I mention that because of the other potential issues which had been canvassed at earlier stages. Reference was made to whether, in any event, a Convention ground was present. At Paragraph 8.1 the Tribunal stated:

> "That submission does appear to me to have merit, and indeed appears to be acknowledged in the communication from Amnesty International… Nonetheless the point is perhaps somewhat academic, given my findings as to his credibility"

10. I consider the appellant's case on the facts to be a very difficult one because of the hurdles he has to surmount, to which reference has been made. The appellant rightly received the completely fresh assessment by the Tribunal that the decision reconsideration required. I have to say, with respect, that I find the assessment of credibility in the determination under appeal difficult to follow and unconvincing. It is difficult to extract acceptable and satisfactory reasoning from the judge's assessment to which I have referred. It does not assist her consideration that adverse comments are interspersed with references to and comments upon other material.

11. I have referred to the opening words of the section: that is, the finding, right at the start, adverse to the appellant, on the issue of credibility. That statement is, of course, only as good as the reasoning which follows it.

12. Ms Hoskins, who appears for the Secretary of State, was pressed by the court to identify in the determination the reasons for which the finding had been made. She has strenuously attempted to do so. Ms Hoskins relies, in particular, on the long period during which the appellant was not troubled. The tribunal states at paragraph 7.13:

> "In relation to the attack on him, when he claims that he was injured with a hand grenade, following

> his attempt to speak to his father's kidnappers, he claims that he was in hospital for approximately two months. …in 2002…he submits that he stayed in the first hospital for a month and whilst he was there two men came to look for him, following this he was transferred to a plastic surgery hospital and again two men came searching for him. This of course suggests that the group was actively pursuing him but if he were an inmate at a hospital, particularly with a significant injury, it seems to me that he could quite easily have been located and targeted again and yet he was not. Following this he states that he went home, the reason being given at the hearing that this was a more hygienic environment for him to recuperate in. He further states that between 2002 and 2004 he had no problems. If the gang members that he describes were seriously interested in finding him, I do not find that to be a credible submission. In terms of what happened in 2004, he simply states that his father was questioned about him on two occasions. Indeed, his oral evidence at the hearing was somewhat contradictory to his witness statement as he said quite clearly that his father had been threatened on two or three occasions in 2004 and 2006 although there is no reference in the witness statement to any threats being made in 2006.
>
> 7.14. Indeed he asserts in the witness statement that the situation "seemed to have calmed down", as a result of which he returned to the family home on 25th February 2006 and immediately afterwards the family home was bombed. It seems to me quite implausible that if the individuals in question had any serious interest in the appellant they would not have made more effort to locate him over those two years or indeed suddenly find out on the day that he went home that he had returned to the family property, and this led to a bomb attack."

That appears to me to be the best of the points made and indeed, potentially, is a powerful one. If for a long period a person is not disturbed, it may follow that he is unlikely to be disturbed in the future.

13. However, on behalf of the appellant, Mr Doerfel makes the submission that the Immigration Judge did not, in attaching weight to those points, have regard to the expert evidence which had been called before her. Two experts were called, one of whom was Ms Schwandner-Sievers, who produced a very detailed report about conditions in Albania. The Tribunal accepted that the report was "clearly very well-researched and her sources well-documented".

14. Included in her evidence, and indeed much of it is consistent with other background material as summarised in the judgment of the earlier tribunal, consideration is given to the motivation of criminal gangs and to the part played by gangs in modern Albania. Mr Doerfel submits that the tribunal had no regard to two submissions he made, the first of which was that the appellant went into self-confinement during the years 2002 to 2004. He hid and that was why he was not troubled. That may or may not be a good point, the immigration judge being the judge of the facts, but it was a point which required to be considered and considered on the basis of the material placed before her.

15. As to the suddenness of the bombing, Mr Doerfel relied upon expert evidence that it was under the dictates of honour in Albania. It is the return to home which is likely to give rise to the type of drastic action which, it is claimed, occurred. Whether that point was accepted is another matter, but it was one which required the consideration of the tribunal in the Albanian context. The immigration tribunal is, of course, a specialist tribunal. It is accustomed to considering oral and written evidence against the background of in-country information but must have regard to the in-country material specific to the particular country, and there is no doubt that the presence and operation of gangs and the persistence of blood feuds is currently a feature of Albanian life.

16. Ms Hoskins relies on the limited extent of the tribunal's finding at 7.11 about alleged inconsistency in the different parts of the interview, a point which had appeared in the original letter of refusal. The court has been in a position to analyse the force of that point, and in my judgment there is no merit in it. The reference to the girlfriend is not inconsistent with the stance which the appellant had been taking at interview.

17. Ms Hoskins relies on the finding at 7.12 where the tribunal point out an inconsistency in the appellant's evidence before the tribunal. It had been suggested in the written statement that following the father's being kidnapped, the appellant "started living" with his uncle. The tribunal record in paragraph 7.12 that:

> "His oral evidence at the hearing suggested that he had in fact lived at home on a number of occasions, going to stay with his uncle on other occasions."

18. The tribunal held that there was discrepancy for which no coherent explanation was given between the use of the word "started" in the written statement and the subsequent statement that he had been to stay with his uncle on other occasions. It is not for this court to say that there is no merit in a point such as that. In the context of this case, however, it appears to be an extremely slender thread on which to base a finding of absence of credibility.

19. Evidence was given about the tragic loss of the hand and the way in which it was caused. The evidence about that is important, possibly central to the case, but it is not necessarily decisive. That the appellant did suffer a grievous accident with a grenade can be assumed for present purposes and is

extremely likely. It was necessary for the tribunal to consider the circumstances in which the damage occurred. Even if it had been self-inflicted, it would not in current Albanian conditions have necessarily meant that he was not the victim of persecution. On the other hand, if he was attacked on the occasion in 2002 as alleged, it does not necessarily follow that he was at risk of persecution in the Convention sense, either at that time or now. The entire case, in the judge's ruling, turned on credibility and it was the truthfulness or otherwise of his account about his injury that may be important to the finding of credibility and the truth of other allegations made.

20. The judge dealt with the grenade question at several places in her ruling. The comprehensive finding is at paragraph 7.29:

> "Concerning the core of his account and the adverse interest of the criminal gangs in him, leading at one point in time to an attack, after which he lost a hand. I accept entirely that this is a young man who has undoubtedly suffered a serious injury caused by an explosive device. Nonetheless, because of the credibility issues I have already referred to, I do not accept that he received this injury in the circumstances that he claimed and as previously stated there has been a singular lack of compelling medical evidence from any hospital in Albania, simply a letter concerning his ongoing treatment of relatively recent date. At the adjourned hearing I have already referred to, Immigration Judge Verity did in fact raise with the representatives before her the issue of whether or not the appellant had undertaken military service, during which he might well have been injured. This led to a complaint being made about Immigration Judge Verity. Nonetheless, despite such complaint the directions that she issued on the last occasion did in fact elicit certain further documents from the respondent and indeed from the appellant's representatives."

21. Reference had been made some paragraphs earlier, before other matters were dealt with, to the lack of documentary evidence of treatment in hospital:

> "In such circumstances, I cannot see why it has not been possible to obtain any supporting medical evidence from either of these two hospitals referred to which would presumably clearly state the date on which he claimed to have been injured and also the dates of his hospital admission. In my opinion he has had more than ample time to produce this type of evidence, given that this is in effect his second appeal hearing and he has now been in the UK for over a year. He must have realised that since his

> claim was dismissed on 17th July, his credibility was seriously in issue."

22. Thus the tribunal was attaching considerable weight to the absence of documentary evidence about the medical treatment. That appears to me to have been unfair. The question of whether it was feasible to obtain such documentary evidence is not considered by the tribunal. Secondly, no assumption could be made that the absence of such documentary evidence inevitably reflects on credibility on the ground that it must have included an account of how the injury was caused. Thirdly, in the conditions in Albania, of which there had been considerable evidence before both tribunals, it does not appear to me at all unlikely that a man going into hospital with a serious injury such as this would not want to disclose, even to doctors, the allegations about how it was caused now relied on. If there was truth in his claim that he was under threat and in fear, in my view it would not be at all surprising if he declined to give a detailed account. To make the assumptions the tribunal did and to draw the conclusions it did, adverse to the appellant's credibility, appears to me to be wrong.

23. Having cited the whole of paragraph 7.29, I refer to the last sentence, the relevance of which in that paragraph is not clear to me. This is an issue which arises several times. We have had the advantage of Ms Hoskins attempting to explain the contents of the report, but the last sentence in no way appears to follow from the reasoning in the paragraph or to lead on to some further point which was to be made in the next paragraph. The next paragraph, 7.30, deals with an entirely different question. There was a later reference, the causation of the injury having been dealt with as comprehensively as the tribunal apparently intended to, to the appellant having been an apprentice electrician and that the injury possibly having been caused as a result of such work. Even with Ms Hoskins's help I have had difficulty in following, on that and other points, the relevance of statements made in the determination and their effect on the ruling.

24. At paragraph 7.17 the tribunal state:

> "I additionally found his account of financing his trip to the UK to be implausible."

25. He arrived in the back of a lorry. Clearly somebody paid for the journey and it appears to be not at all implausible that the trip was financed in the way which the appellant described; that is, by members of his family. If the point which the tribunal was seeking to make was the different point that the availability of such funds did not square with other evidence which the appellant had been giving, then that point should have been spelt out and explained.

26. In different places in the assessment, reference is made to the appellant's claim to be of a mixed ethnicity, his mother being Roma. At an earlier stage in the decision, it appears to have been accepted that that was the case. However:

> "7.35 I would simply add that quite apart from the objective evidence and indeed the reference by Miss Shwandner-Sivers [sic] to the fact that mixed marriages are rare, additionally, the medical document that has been produced on the part of the appellant appears to indicate that he is known to the social security department (and presumably entitled to some sort of benefits). In addition, the document produced in the supplemental bundle that gives the details of his family does in fact refer to the fact that his mother's father appears to have a Muslim name (Ibrahim), despite his submission that she is a Roma."

27. That point is not developed in the following paragraph, which is the concluding paragraph I have already cited. It appears to me to be unfair given the earlier finding, and put where it was. It is impossible to gauge what significance it had on the conclusion at the beginning of the determination.

28. Further, in that paragraph, there is a presumption that the appellant is entitled to "some sort of benefits" in Albania. That is actually contrary to the evidence which was before the tribunal and is a finding that cannot be justified. Moreover, assumptions of that kind are not ones which ought properly in my judgment to have been made and inevitably cast doubt, along with the other matters, on the adequacy of the tribunal's reasoning. What follows from the finding is again unclear, or what significance in the overall assessment the tribunal again gave to it.

29. I referred to the reference in paragraph 7.27 to the acknowledgement by the tribunal of the expert witness's clarity. That paragraph too, however, continues, by reference to her evidence:

> "In respect of criminal elements and the gangs described by the appellant, she does in fact make a relatively recent reference to the Kola and Dedja, indicating that they appear to fit the typical profile of Albanian criminal gangs. She refers to an article of relatively recent date, namely June 2007, and in terms of what is known about these two groups, again the references to them do appear to be in the past tense and confirm to the fact that the leader of the Kola gang, namely Ermir Doda had in fact been arrested and in terms of the Dedja, Halit was 'the only one who survived a long series of mutual murder with the Kola gang'. It has not been disputed by the respondent that in historical terms these gangs did in fact exist."

The tribunal then go on to deal with a quite separate point and, interesting though that information is, it is impossible to know what relevance the tribunal saw in it on the question of credibility.

30. The inclusion of inconsequential material is not of course fatal to a finding of fact, if it is clear from other parts of the determination that the relevant issue, in this case credibility, has been addressed and analysed fairly on the basis of the evidence, viewed in the context of the background material. I regret that in my judgment such a systematic analysis is not present in this determination and the adverse finding on credibility is not one which can be supported. The failures described amount to an error of law.

31. I have referred already to the statement in paragraph 7.29, when the injury was considered:

> "…because of the credibility issues, I have already referred to…"

An almost identical reference appears in another place:

> 7.21 …. given the credibility issues I have referred to within this determination."

32. In my judgment, those other issues, on which the tribunal plainly relied in reaching conclusions on the injury issue, do not amount to material which could be relied upon in the way the tribunal did.

33. What I have found necessary in this case is a detailed analysis of the reasoning. It is not a literary analysis. I appreciate the difficult task which the tribunal has, and the pressure of work upon it. I do, however, have real concern as to whether the credibility issue has been addressed fairly and coherently, for the reasons I have given. The reasons given for the conclusion expressed in the first paragraph do not clearly emerge in the assessment.

34. For those reasons I would allow this appeal.

Lord Justice Hooper:

35. I agree. I wish only to add this. As my Lord, Pill LJ points out in paragraph 7.1 the immigration judge starts with the words:

> "I make a finding of credibility adverse to the appellant."

36. Thereafter she says that she has taken into account all available material and given all proper weight to the evidence before her. The danger of starting in that way is that the decision maker thereafter strains to finds reasons which support the conclusion already reached. There is a further danger in that the reader of the decision may often have difficulty, as I have done in this judgment, in ascertaining what it was precisely that led to the finding of adverse credibility. I give some examples. The first reason apparently given for the finding of adverse credibility is in paragraph 7.9. There the judge places weight on the fact that the appellant's claims to have seen Halit Dedja in a police station does not appear to be substantiated by any objective documentation. For my part, I cannot see how one could ever expect the evidence that he had seen Halit to be so substantiated, and there is ample

evidence in the background material that someone like Halit Dedja would have access to a police station.

37. The judge then went on to say that she could not see any reference to the two groups, namely Kola and Dedja, in the objective documentation. As Ms Hoskins accepted, that was wrong; there was reference to the Kola group in the evidence of one of the experts at page 211. She then goes on to say there appears to be no reference to the appellant's cousin, Alfred, being one of the victim's of the Kola gang. I for my part do not see how it is helpful in deciding whether or not to believe the appellant that there had apparently been no press reports, or at least no press reports made available to the tribunal, which referred to the death of Alfred. What the background material does show is that blood feuds are rife in Albania and there are many people who get killed. One would therefore not necessarily expect reference to a particular person being killed being found in documentation before the tribunal.

38. If one looks at the next paragraph, which seems to be the second attack on the credibility of the appellant, the judge says that the expert confirmed that many people would have heard of these two gangs. That cannot be a reason for finding that he is not credible. It could be something that one would be entitled to mention, having made a finding on other grounds that he is not credible, to explain why it was that he knew about the two gangs.

39. The judge then went on in paragraph 7.11 to look at the interview. Following the refusal letter, the judge refers to question 19 of the interview and question 75 of the interview. Ms Hoskins did not have a copy of the interview, but we did. I have looked at both those questions and also at three more important questions to which no reference was made by the judge, namely 52, 53 and 54. Having looked at all of those questions carefully, it seems to me very difficult to conclude that there was any inconsistency in the manner described in paragraph 7.11. My Lord has mentioned a number of other matters, but I give one more example of the danger of approaching the case in the way that she did, and that is the reference, to which my Lord has already referred, to the mother's father having a Muslim name. In that passage, immediately preceding a general statement that for all the above reasons she declines to accept the appellant as credible, she makes a statement which seems to be clearly wrong, having regard to the evidence which is now before us. Apparently in Albania, the Roma are predominately Muslim. I say that only because it is an example of a decision maker, in my view, straining to find a reason for not believing someone because from the outset she has stated that that is her conclusion.

40. Most worrying of all is that she does not set out the appellant's account of how he was injured. That account is of course central to this case. Indeed, if one looks at her reasoning with care, she does not specifically accept that the injury was caused by a hand grenade; she refers to it as being an explosive device. At least insofar as the material before us is concerned, there seems to be no doubt that the injury was caused by a hand grenade which had exploded in the hands of the appellant. Again, I become concerned when I see, as I do in paragraph 7.32, that in the view of the judge the appellant might well have

encountered explosive devices "as a trainee electrician". I do not see how a trainee electrician might end up with a hand grenade in his hand which exploded.

41. I agree that this appeal must be allowed for the reasons given by my Lord.

Lord Justice Moses:

42. I also agree that the appeal should be allowed for the reasons given by both their Lordships. This case demonstrates, as Hooper LJ has said, the dangers of expressing a conclusion at the outset. The findings of fact as to credibility started with the conclusion. The first danger, as he pointed out, is that it looks as though the conclusion was reached and then it was sought justify it rather than giving the reasons and reaching a conclusion.

43. The second danger is that each and every factual finding thereafter appears to be set out in justification for the conclusion, but Ms Hoskins on behalf of the Secretary of State was compelled to accept that some of the conclusions had no particular relevance or significance to the factual conclusion that was reached.

44. It is clearly inappropriate for this court to disagree with the fact-finding tribunal as to that which is helpful and that which is not, still less is it appropriate for this court to teach the fact-finding tribunal how to structure its judgments and determinations; but nevertheless, when one finds, as justification for the all-important conclusion that the applicant was not to be believed, a series, as demonstrated by both their Lordships, of reasons that cannot be justified, then, even though there are other reasons which might justify a conclusion that the appellant is not to be believed, serious doubt is cast upon that conclusion.

45. I would venture to disagree with my Lord as to the basis for condemning this determination in relation to the events which caused the appellant to leave home and go to stay with his uncle. At paragraph 7.12 it is plain to me that the immigration judge was relying upon the fact that in his statement the appellant was saying that he left to stay with his uncle after his father had been kidnapped, whereas in cross examination he seemed to suggest that he was living with his uncle before. That is a point that, to my mind, the immigration tribunal would be entitled to rely upon when considering credibility. Similarly, the all-important question being whether he would be at risk on return in circumstances where he suggested that the police would not protect him should the rival gang have a continuing interest in him, namely the period when he was not attacked by that gang between 2002 and 2004, was clearly a period upon which the judge was entitled to rely. She was entitled to rely upon the absence of interest of the gang whilst he was in hospital and unprotected by his family and clearly not hiding. She was also entitled to reach the conclusion that whilst he was staying either with his uncle or with his father he was certainly not hiding, although he might have been confining himself, away from the public gaze. Those factors, to my mind, were factors on which the judge was entitled to rely, but she was not entitled to rely upon it unless she dealt specifically with the riposte made by

Mr Doerfel on behalf of the appellant that the explanation for their lack of interest was that he was keeping himself from the public gaze and thus not affronting the dignity of the gang. Unless she dealt with that it was not fair for her to rely upon that period as testing his plausibility.

46. Further, bearing in mind these were all reasons as to why he was not to be believed, it was wrong of the judge to rely upon the financial arrangements in relation to his escape. She said she found "the financing of the trip to the United Kingdom to be implausible". Ms Hoskins was compelled to accept that she meant the opposite: that whilst that might have been plausible, it did not sit with his assertions that his mother's family were in dire straits and the father's family had disowned him.

47. That leads me to the question, to which both my Lords referred, namely the conclusions as to whether he was a Roma or not. That was of particular relevance, firstly to credibility, and, of course, as to risk on return, which she did not deal with because she had disbelieved the appellant; but it was in my judgment gratuitous to disbelieve him on the grounds that his mother's father had a Muslim name (see paragraph 7.35) and that sort of point, which might be deeply insulting to the appellant, cannot merely be dismissed as being an add-on and of no particular relevance. If it was an add-on and of no particular relevance then the point should never have been made at all.

48. Part of the difficulty in this case may have stemmed from the way that this case was presented. We were not there and we cannot know, but if it was anything like the way this appeal was presented, it is perhaps small wonder that the judge found herself in difficulty in grappling properly with those points with which she was obliged to grapple. We were presented with 42 pages of grounds, which the judge, Sedley LJ, in granting permission, described as being close to an abuse of this court's process. He suggested a much more limited document to assist us in our passage through the voluminous papers. No such document arrived until this morning. Whilst this might have put us in some difficulty, it is not difficult to imagine in what difficulty that must have placed counsel for the Crown. Not only was she faced with hostile questioning from this court, with which she bravely battled, but she must have found it extremely difficult to be able to foresee what points it was that she was going to be faced with today and what points would disappear.

49. In my judgment no appellant's case is advanced by such a voluminous presentation but, as I have said, for the reasons given by my Lords, with which in their main thrust I wholly agree, I also would allow this appeal.

Order: Appeal allowed