

Judgement on open justice 'welcomed' on victim's right on withholding sensitive information

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The Supreme Court, by a majority, has allowed for the appeal in *Belhaj and another (Appellants) v Director of Public Prosecutions and another (Respondents)* [2017] UKSC 33, finding that judicial review proceedings of a decision to prosecute or not to prosecute were proceedings to review a criminal matter and therefore themselves a criminal matter. As a result, had the proceedings in the court below (which arose out of the extraordinary rendition of Mr Belhaj and his wife and the subsequent claim brought by them against the Director of Public Prosecutions (DPP) challenging the decision not to prosecute those involved) continued, they could not have been conducted under the special closed material procedure, under section 6 of the Justice and Security Act 2013. This allows for the court to sit in private and without a party and his or her legal representative in order to prevent disclosures which are damaging to the interests of national security. It follows that the correct procedure to adopt in such cases, where the government wishes to withhold material from on the grounds of national security, would be to make an application for its exclusion on the grounds of public interest immunity (PII). Daniel Machover, partner at Hickman and Rose, notes how the 'use of secret hearings always raises access to justice issues' and believes the judgment will make a significant impact on future 'important cases', such as 'police shootings where bereaved families challenge decisions not to prosecute armed police officers'.

Background

The High Court had held that judicial review claims brought against decisions of the public prosecutor not to prosecute an individual constituted 'relevant civil proceedings' (and were not proceedings in a criminal cause or matter). This decision was overturned by the Supreme Court. Lord Sumption, giving the judgement of the majority, held that that the 'ordinary and natural meaning of "proceedings in a criminal cause or matter" includes proceedings by way of judicial review of a decision made in a criminal cause, and nothing in the context or purpose of the legislation suggests a different meaning'.

The proceedings below had been settled in the interim with a [statement](#) given in Parliament on 10 May 2018. The Supreme Court nevertheless proceeded to give judgment in the case due to the importance of the issues involved.

Challenging prosecution decisions

Daniel Machover, partner at Hickman and Rose, welcomes the decision that is 'in favour of open justice challenging prosecution decisions', as he notes how the 'use of secret hearings always raises access to justice issues'

Machover also highlights the significance of the judgment, suggesting that it will most likely impact 'a small number of important cases', for example 'police shootings where bereaved families challenge decisions not to prosecute armed police officers'.

Source: [Belhaj and another \(Appellants\) v Director of Public Prosecutions and another \(Respondents\) \[2017\] UKSC 33; On appeal from \[2017\] EWHC 3056 \(Admin\)](#)

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