

**SUMMARY OF THE DECISION OF THE HIGH COURT IN
R (DOLAN AND OTHERS) v THE SECRETARY OF STATE FOR HEALTH AND
SOCIAL CARE AND OTHERS**

1. This judgment concerns a claim by 3 claimants who sought permission to challenge the restrictions imposed to combat the coronavirus pandemic. The first claimant is a United Kingdom citizen, born in the United Kingdom, but currently living in Monaco. He owns businesses in the United Kingdom and has family here. The second claimant is a UK citizen resident in England. She is a Roman Catholic and has been unable to attend mass during the lockdown as places of worship have been closed for communal worship. The third claimant is a pupil at a school.

2. The background to the claim was the emergence of a novel pathogen, coronavirus which emerged in China and spread throughout Asia, western European and north America. The disease was transmissible between human. The scientific understanding of this novel coronavirus was limited. There was no effective treatment or vaccine. Against that background, the Secretary of State for Health and Social Care made Regulations on 26 March 2020 imposing restrictions on the opening of shops and business premises, the movement of persons, public gatherings and the use of places of worship. The claimants claimed that the Secretary of State did not have the legal power to impose restrictions on the country as a whole and had acted unlawfully in doing so. They alleged that the regulations violated a number of their rights under the Convention for the Protection of Human Rights and Freedoms (“the Convention”).

3. Mr Justice Lewis held that the minister did have power to make general regulations to protect against or control the incidence and spread of coronavirus in England. The minister was able, therefore, to make general regulations applicable to all persons and premises in England. In making and maintaining the Health Protection (Coronavirus,

Restriction) Regulations, the minister had not acted unlawfully. He had had regard to relevant considerations. He had acted rationally and proportionately. He had not fettered his discretionary powers.

4. So far as the Convention was concerned, the restrictions in force on 2 July 2020 preventing people staying overnight other than at the place where they lived did not amount to a deprivation of liberty. The restrictions were a justifiable interference with the right to family life. They did not deprive the claimants of any property or possessions.
5. The restrictions on public and private gatherings (only 6 people could gather in a public place and only 2 in a private place) did restrict the freedom of assembly and, as such, infringed a freedom which was important in a democratic country. The context in which the regulation was made, however, was one of a global pandemic where a highly infectious disease, capable of causing death and serious ill-health, was spreading. The disease was transmissible between human. The restrictions were intended to restrict the opportunities for transmission between humans. The regulation therefore sought to limit the opportunity for groups of individuals to gather together, whether indoors or outdoors. The regulations were time-limited and would expire 6 months after being made in any event. During that period, the government was under a duty to carry out regular reviews and to terminate the restriction if it was no longer necessary to achieve the public health aim of reducing the spread and incidence of coronavirus within the population. In all reality in those circumstances, there was no realistic prospect of a court deciding that in these, possibly unique, circumstances the regulation was a disproportionate interference with the rights conferred by Article 11 of the Convention.

6. The courts had already concluded that it was arguable that the restrictions on use of a mosque for communal prayers was an interference with the freedom of religion guaranteed by Article 9 of the Convention. That issue was, therefore, to be the subject of a full hearing to determine if any interference was justified. While it was similarly arguable that the restriction on communal worship in Roman Catholic churches may involve an unjustifiable interference with freedom of religion, that issue may have become academic in the light of amendments to the regulations which came into force with effect from 4 July. The parties were therefore invited to make further submissions on that issue.

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 publicly available. A copy of the judgment in final form as handed down can be made available after 2 p.m. on 6 July 2020 on request by email to the administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk