

**Gillan and Quinton v United Kingdom (Application no 4158/05)**

This case involved the stop and search of two individuals near an arms fair in East London under s. 44 of the Terrorism Act 2000. The individuals challenged the compatibility of the statutory power itself, on the grounds that it is incompatible with the right to respect for private life (Article 8 ECHR). The ECtHR upheld their challenge on the grounds that the power in Section 44 is too broadly drawn and that there are inadequate safeguards against abuse. The ECtHR was concerned about both the breadth of the Secretary of State's power to provide initial authorisation for such searches and the amount of discretion afforded to individual officers using the powers. The scope of Section 44 was criticised by the previous JCHR on a number of occasions over the last Parliament. In its report on the Crime and Security Bill, the Committee acknowledged that a request for a Grand Chamber hearing was pending, but argued that the seriousness of the issue justified an immediate reconsideration of the law on stop and search.<sup>1</sup>

On 30 June 2010, the Grand Chamber refused a request for a further hearing by the UK Government. Responding to this decision, the Home Office said: "The government has already committed to reviewing counter terrorism legislation which will include the operation of Section 44 stop-and-search provisions".<sup>2</sup> On 8 July 2010 your statement to the House of Commons on the use of Section 44 made clear that the Government intends to include the operation of Section 44 in its wider review of counter-terrorism measures, but that interim guidance was necessary to remove the incompatibility identified by the European Court of Human Rights in this case. In short, we understand that this interim guidance means that:

- Authorisations for the use of section 44 stop and search powers will only be made when "necessary" to prevent terrorism, rather than "expedient" for that purpose, which is a stricter test; Section 44 powers will only be available for stop and search of vehicles, not individuals;
- Officers will only be able to stop and search individuals using powers under section 43 of the Terrorism Act 2000, which require officers to reasonably suspect the person to be a terrorist;
- Officers will only be empowered to stop and search vehicles under Section 44 when they have a "reasonable suspicion" that the vehicle is being used for the purposes of terrorism.

We understand that you consider that the interim guidance will ensure that Section 44 is "fully in line" with the decision of the European court of Human Rights in this case, pending the outcome of the review of counter-terrorism powers.

My Committee welcomes the Government's swift and constructive response to this judgment of the European Court of Human Rights, and in particular its willingness to provide interim guidance about the use of a power which has been found to be in breach of the ECHR, pending its amendment. This is a commendable approach to European Court judgments which will help to prevent repetitive violations and we look forward to this approach being taken in other cases.

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<sup>1</sup> Twelfth Report of 2009-10, *Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill*, HL 67/HC 402, paras 1.91 – 1.97.

<sup>2</sup> <http://news.bbc.co.uk/1/hi/uk/10471005.stm>

However, we would be grateful if you could provide us with the following further information:

- 1. There already exists detailed guidance on the operation of Section 44 from both the Home Office and the Association of Chief Police Officers (“ACPO”). Has that guidance been formally suspended? Pending the outcome of the review of counter-terrorism powers, will any further, more detailed guidance be issued as to the practical effect of your statement and if so will it be produced by the Government or ACPO?**
- 2. If no further written guidance is considered necessary by the Government, we would be grateful if you could provide an explanation for this view, in light of the concerns of the European Court of Human Rights that the breadth of the discretion available to police officers is likely to lead to the use of the powers in s.44 in a way which interferes with individuals’ right to respect for their private life?**
- 3. If further written guidance is produced, we would be grateful to have an opportunity to comment on a draft before it is finalised.**
- 4. We would be grateful if you could confirm that in the review of counter-terrorism powers consideration will be given to further safeguards against the possible abuse of the stop and search powers in the Terrorism Act 2000, including those recommended by this Committee in its report on the Crime and Security Bill last session:**
  - (1) A requirement that an assessment of proportionality be carried out before an initial authorisation is given;**
  - (2) Tighter geographical limits on an authorisation and**
  - (3) Stricter time limits on the duration of an authorisation and the prevention of indefinite renewal.**

The Metropolitan Police Service took the decision, in light of your statement, not to reapply for a section 44 authorisation in respect of the London area.

- 5. Please provide us with up to date statistics on the operation of Section 44, including:**
  - a. How many authorisations are currently in force in the UK? In particular:**
    - i. Where do the authorisations apply?**
    - ii. On what grounds have the authorisations been made?**
    - iii. Were the authorisations made before or after your statement on interim guidance?**
    - iv. How many people have been stopped and searched using the section 44 power since the decision of the European Court of Human Rights in the case of *Gillan*?**
  - b. Are any legal challenges pending as a result of the operation of section 44 either before the European Court of Human Rights or domestic courts?**

**If so, please provide information on each of these cases, including the grounds of challenge and any Government or police response.**

- 6. Will the Government review any Section 44 authorisations which remain in force, to consider whether their continued operation is compatible with the right to respect for private life?**

There is one further matter concerning section 44 of the Terrorism Act 2000 which is not strictly speaking a question of implementing the judgment in *Gillan* but on which my Committee would appreciate some further information. On 10 June 2010, the Policing Minister, Nick Herbert MP reported to the House of Commons that 14 police forces had been found to have been using Section 44 powers without valid authorisation, due to administrative errors. The Metropolitan Police Service was taking steps to contact those stopped unlawfully. The Home Office was conducting an internal review of the process for authorisation.<sup>3</sup> On 22 June 2010, the Policing Minister agreed to provide the House of Commons with further information when it was available.<sup>4</sup>

- 7. We would be grateful for further information on the unlawful use of Section 44 powers by UK police forces, further to the statement of the Policing Minister on 10 June 2010. In particular:**
- a. How many individuals were stopped and searched unlawfully;**
  - b. What further police action, if any, resulted from those stop and search operations;**
  - c. What steps have individual forces taken to ensure that those individuals are aware that they were stopped and searched unlawfully; and**
  - d. Whether any individuals or forces have taken steps to seek or provide redress for these unlawful stop and search operations? (If so, where details are available, we would be grateful for fuller information.)**

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<sup>3</sup> HC Deb, 10 June 2010, Col 24 WS

<sup>4</sup> HC Deb, 22 June 2010, Col 155 W