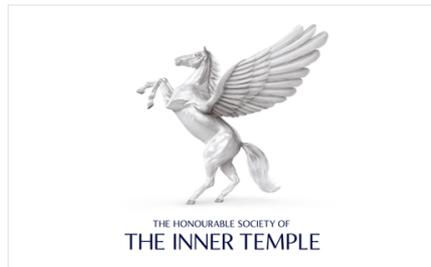


# KNOWING OUR RIGHTS – INNER TEMPLE INTER-UNIVERSITY HUMAN RIGHTS MOOT 2018



The [Knowing our Rights](#) research project aims to provide analysis, and to deepen and increase understanding, of the application of the European Convention on Human Rights (ECHR) in the UK, based on academic scholarship and engagement with the public, young people in particular. The project is concerned to ensure that the public in the UK obtains a balanced, research-based view of rights in the European Convention, as applied in the UK through the Human Rights Act 1998. The project also aims to raise public awareness of how the European Court of Human Rights operates, how its case law is accommodated in the UK, and the consequences for our human rights that would derive from the UK potentially withdrawing from the Convention or watering down relevant rights.

The Knowing our Rights (KOR) – Inner Temple Inter-University Human Rights Moot will offer Law students and recent Law graduates the unique opportunity to put into practice the principles and case law of the European Convention on Human Rights, in the context of the English legal system.

The moot will be judged by academic experts working in the KOR project, esteemed members of the Honourable Society of the Inner Temple, barristers, judges and other legal professionals collaborating with the KOR project.

The finals of the inaugural KOR – Inner Temple Inter-University Human Rights Moot will be taking place at the Honourable Society of the Inner Temple on 4 May 2018.

## **Knowing Our Rights – Inner Temple Inter-University Human Rights Moot 2018**

### **2018 Moot Problem**

#### **IN THE SUPREME COURT**

#### **ON APPEAL FROM THE COURT OF APPEAL (CRIMINAL DIVISION)**

**Regina**

**and**

**Aazim Amir and Bilal Badar**

On 31 December 2014, a bomb was detonated at the reception of the Shard building in London, but the charges failed to explode. The first appellant, Aazim Amir, was suspected of having detonated the bomb. The second appellant, Bilal Badar, was suspected of having given shelter to Amir after the failed attack.

After the arrest of Aazim Amir, the day following the attack, the police conducted a ‘safety interview’ with him, pursuant to paragraph 8 of Schedule 8 to the Terrorism Act 2000, on the basis that there was a compelling need to discover whether further attacks were being planned and in order to prevent them from occurring. The police delayed providing Amir with access to legal advice when conducting the interview, in accordance with the provisions of Schedule 8. The police failed, however, to issue him with the correct caution. Amir was told that the court could draw adverse inferences from his silence, though this is not allowed in ‘safety interviews’, on account of suspects not having the opportunity to consult with a lawyer.

Amir made incriminating statements during the interview, but explained that the bomb had merely been intended as an elaborate hoax as a protest against the continued reliance of the UK Government on the PREVENT policy that discriminated against Muslims, young people in schools and Universities in particular.

In relation to the second appellant, Bilal Badar, police officers began interviewing him as a witness, but an hour into questioning they considered that he was risking incriminating himself

and should therefore be cautioned and informed of his right to legal advice. They decided to seek instructions from senior officers, but were asked to continue to interview the suspect as a witness. Badar then made several self-incriminating statements, qualified by the fact that he had come to give shelter to Aazim Amir as a result of a chance encounter, had not taken part in any plan to assist him and had only let Amir stay at his home because he had been afraid after the latter's revelations that he had taken part in the failed attack on 31 December.

At trial, the defendants submitted that their interview answers had been obtained in violation of their right against self-incrimination protected under article 6 of the European Convention on Human Rights and relevant provisions in the Police and Criminal Evidence Act 1984, and their admission in trial would therefore in itself constitute a breach of the right to fair trial under article 6. They requested the trial judge to exclude the interview answers using her discretion under section 78 of the Police and Criminal Evidence Act 1984.

The trial judge rejected these submissions, the evidence was admitted and the defendants were convicted.

On appeal, Mary Liberty LJ, delivering the judgment of the court, which upheld the trial court judgment, held that:

1. the question whether the results of the safety interviews should be used in evidence at a subsequent trial was subject to the overarching provisions in section 78 of the Police and Criminal Evidence Act 1984, and there was no basis for interfering with the judge's decision to admit the evidence. The admission of the evidence was a fact-specific decision which had to be made in the overall circumstances of each individual case. Here there were strong public policy grounds justifying the use of the evidence. The admission of the evidence had not had an adverse effect on the fairness of the proceedings.
2. in relation to article 6 of the Convention, the court was likewise required to view the proceedings as a whole. Where compelling reasons to deprive a suspect of access to the right to a lawyer had been established, a holistic assessment of the entirety of the proceedings should be conducted. Where no compelling reasons had been established, the Court should apply a very strict scrutiny to its fairness assessment, with the onus

being on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice. The overall fairness should be assessed taking into account a non-exhaustive list of factors, including whether the applicant was particularly vulnerable, whether an exclusionary rule applied at trial and the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use, the quality of the evidence, whether guilt was assessed by professional judges or lay jurors, the weight of the public interest and other relevant procedural safeguards afforded by domestic law and practice. Taking these factors into account, the Court of Appeal had reached the conclusion that the use of the interview answers had not amounted to a violation of article 6 of the European Convention on Human Rights.

The Supreme Court has allowed a third-party intervention by [Knowing Our Rights](#), in the form of a comparative law report. The report demonstrates that a significant number of members of the Council of Europe have, in recent years, begun to introduce evidentiary rules requiring the exclusion of statements obtained in violation of the right against self-incrimination, in accordance with – and in order to more effectively implement – relevant ECHR jurisprudence and EU procedural rights directives. But the report also demonstrates that this is by no means the universally accepted position in the Council of Europe, and that many members continue to rely upon an assessment of the overall fairness of the proceedings. The report also looks at the exclusion of improperly obtained confessional evidence in the United States, where the seminal *Miranda v Arizona* judgment continues to require the automatic exclusion of improperly obtained self-incriminating statements (unless an exception applies).



Dr Dimitrios Giannouloupoulos is the principal investigator in the Knowing Our Rights research project. Dimitrios is the founder of the Britain in Europe think tank, and an academic fellow of the Inner Temple. He has published extensively on suspects' rights, criminal evidence and the ECHR, and provides commentary on current legal and political affairs in relation to the UK, France and Greece.



Gabrielle Laurin is a Research Assistant in the Knowing Our Rights project. She is completing her LLB at Brunel Law School with the intent of pursuing the Bar. Gabrielle has a passion for social justice and human rights issues. In 2015, Gabrielle won Brunel's Internal Mooting Competition hosted at the Supreme Court. She is the coordinator of the inaugural KOR-Inner Temple Intra-University Human Rights Moot 2018.

