

complainant, a suspected Mafioso, by an order of the Milan Regional Court was placed under special supervision for three years with an obligation to reside within an area of 2.5 square kilometres on an island. He brought

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R (McCann) v Manchester Crown Ct (HL(E))

Lord Hutton

proceedings challenging the order and the proceedings terminated in the Court of Cassation which dismissed Guzzardi's appeal. The European Court held that article 6 was not engaged and stated, at pp 369-370, para 108:

"In the court's opinion, those proceedings did not involve the 'determination ... of a criminal charge', even when these words are construed within the meaning of the Convention.

Whether the right to liberty, which was at stake (see paragraph 62 above), is to be qualified as a 'civil right' is a matter of controversy; in any event, the evidence does not reveal any infringement of paragraph 1 of article 6."

no In Raimondo v Italy 18 F.HRR 237 the applicant who was suspected of association with a Mafia-type organisation, was made subject to preventive measures which included being placed under special police supervision. He complained (inter alia) that the proceedings relating to his appeal against the special supervision had taken an unreasonable time in violation of article 6(1) of the Convention. The European Court rejected his complaint and held, referring to Guzzardi, at p 264, para 43 of its judgment:

"The court shares the view taken by the Government and the commission that special supervision is not comparable to a criminal sanction because it is designed to prevent the commission of offences. It follows that proceedings concerning it did not involve 'the determination, of a criminal charge'."

in in the present cases the determination of the applications did not involve "the determination, of a criminal charge" and the orders were designed to prevent the commission of anti-social behaviour in the future.

A fair bearing in the determination of civil rights

1.12 A further question arises whether the admission of hearsay evidence against the defendants constitutes a violation of their rights under article 6 to have a fair hearing in the determination of their civil rights.

A person against whom an anti-social behaviour order is made can have no valid claim that those parts of the order which prohibit him from using or engaging in any abusive, insulting, offensive, threatening or intimidating language or behaviour or from threatening or engaging in violence or damage against any person or property relate to his civil rights. A person has no civil right under domestic law to engage in such behaviour. To the extent that the order prohibits a defendant from entering a particular area or engaging in some activity which is prima facie lawful it can be argued that part of the order affects his civil rights so that article 6(1) is engaged. Articles 8(2) and 11(2) of the Convention permit such restrictions on the rights specified in them as are necessary in a democratic society for the prevention of disorder or crime or for the protection of the rights and freedoms of others, and Lord Nicholls of Birkenhead has discussed the relationship between civil rights under domestic law {to which article 6(1) relates) and the rights guaranteed by the Convention in paragraphs 65 to 72 of his judgment in In re S (Minors) (Care Order: Implementation of Care Rian) [2002] 2 AC 291, 319-3 20. I wish to reserve my opinion on the question whether article 6(r) is engaged, but if there is a valid argument that the hearing of an application for an anti-social

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