

**IN THE ROYAL COURTS OF JUSTICE**  
**QUEENS BENCH DIVISION**  
**ADMINISTRATIVE COURT**

On the application of Nicholas van Hoogstraten CLAIMANT

AGAINST

The Governor of HMP Belmarsh DEFENDANT

NOTE of JUDGEMENT prepared by Alison Dorrell, junior counsel for the Claimant.

Delivered by the Honourable Mr Justice Jackson on 23 September 2002

This judgement is in six parts as follows;

**INTRODUCTION – one**

This is a claim for judicial review. The central issue is whether the claimant is entitled to receive visits from Mr Giovanni di Stefano, hereinafter referred to as GDS. GDS is an Italian Avvocato and the Principal of the Studio Legale Internazionale, a law firm based in Rome.

The Prison Rules 1999 Rule 2 provides that a legal advisor means Counsel or solicitor and includes a clerk acting on behalf of the solicitor. Under Rule 38 the legal advisor should have reasonable access to visit his lay client and offer advice. He may do so out of the hearing but in the sight of a prison officer.

It is contended that GDS falls within the definition of a legal advisor and should be given the right and the opportunity to visit the Claimant in prison.

**FACTS – two**

The Claimant wishes GDS to be his principal legal adviser in relation to the present proceedings GDS will take all of the instructions as to mitigation and then instruct Attridge to act as his agents who will in turn instruct Counsel at the sentencing hearing. The Claimant has it in mind to appeal conviction and the instructions relating to any such appeal are to be taken by GDS in person.

On the 16<sup>th</sup> August GDS visited the Claimant but the Governor of Belmarsh prison has refused to allow him any further access.

Various reasons have been advanced to justify the same, but by 13<sup>th</sup> September the prison authorities were relying on one sole objection. The letter of John Knight addressed to Attridge reads as follows “we will not accept the legal visit booked for the 16<sup>th</sup> September as GDS is not a legal advisor under the Prison Rules”.

The Claimant was aggrieved by that decision and sought a judicial review to challenge it.

### PRESENT PROCEEDINGS – three

It is argued that the Governors decision is unlawful because it removes the rights afforded to the Claimant under Article 6 in the preparation of his case for sentence and appeal.

The claimant seeks two orders:

- (1) that the Defendant’s decision of 13<sup>th</sup> September be quashed
- (2) a mandatory order that GDS be allowed to visit the Claimant

On any view the matter is urgent as the Claimant needs to confer with his new lawyers as soon as possible.

Mr Johnson has said that if the Claimant succeeds access may still be refused to GDS on other grounds.

### IS GDS A LEGAL ADVISOR – four

GDS is not a member of the UK legal profession the Claimants evidence shows and the Defendant’s evidence does not contradict that GDS is an Avvocato who is qualified to practise and does practise at the Italian bar.

On the 1<sup>st</sup> March 1979 directive 77/249/EEC was adopted into domestic law by the European Communities (Services of Lawyers) Order 1978.

The application raises an important question of law namely the interpretation of rules 2 and 38, and their application in the light of the Human Rights Act and under EU law generally.

The 1978 order provides as follows:-

“EEC lawyer means a person entitled to pursue his professional activities under the designation in Italy of an avvocato (article 2).

The purpose of this order is to enable an EEC lawyer to pursue his professional activities in any part of the UK by providing services otherwise reserved to barristers and solicitors (art 4).

No rule of law or practice shall prevent an EEC lawyer from providing any service in relation to any proceedings, whether civil or criminal, before any court, tribunal or public authority, including appearing before and addressing the court or tribunal provided that throughout he is instructed with, and acts in conjunction with, an advocate, barrister or solicitor who is entitled to practise before the court or tribunal concerned (art. 5)

A person seeking to provide any services may be requested to verify his status as an EEC lawyer by a competent authority (in this case the Law Society) (art. 12)

Where such a request has been made (which in this case it has not) the EEC lawyer shall not, except to the extent (if any) allowed by the competent authority, be entitled to provide services until he has verified his status to the satisfaction of that authority (art. 13)

The Courts and Legal Services Act 1990 identifies persons who have a right of audience before the English courts and persons who have a right to conduct litigation before English courts.

Mr Johnson conceded in his second written submission on Friday afternoon that an Italian avvocato who conforms to the requirements of the 1978 order has under the 1990 Act

- (a) A right of audience before English courts (S.27), and
- (b) The right to conduct litigation before English courts (S.28)

That was a proper concession to make and this court agrees with it.

The Claimant is currently in the midst of the trial process and he continues to enjoy the rights afforded to him under article 6.

Mr Johnson has submitted that it is an oddity that he has dismissed his English legal team and engaged in their place an Italian avvocato as his principal legal adviser.

The court disagrees with that submission.

It is no business of this court or of the Defendant in this claim whom the Claimant wishes to instruct to represent him.

He is entitled to instruct anyone who has either a right of audience under section 27 or the right to conduct litigation under the 1990 Act.

Rule 2 of the Prison rules is to be construed in accordance with the convention and “legal adviser” must therefore include any lawyer who is chosen by the prisoner and who is entitled to exercise those rights under the 1990 Act.

Mr di Stefano falls within the definition of EEC lawyer and he falls within the definition of “his solicitor or Counsel” in Rule 2. He must therefore be afforded the proper facilities for visiting the Claimant in Belmarsh prison.

#### THE FURTHER CHALLENGES TO GDS WHICH ARE FORESHADOWED – five

The Defendant has requested the Law Society to ask GDS to verify his status as an Italian avvocato. I am perplexed by this stance.

Since August 16<sup>th</sup> the Defendant has had every opportunity to request that he verify his status and they have not done so.

Any such request to the Law Society at this late stage would deny the Claimant his article 6 rights in these crucial stages of his case.

I therefore rule as follows:

The Law Society may require GDS to verify his status at anytime, but it would not be a lawful exercise of discretion were they to do so for GDS to be then denied access to visit the Claimant in prison.

In relation to the matters concerning GDS hinted at in page 49 of the bundle I rule as follows:

Unless and until the Defendant relies on substantial grounds relating to character their exclusion of GDS from Belmarsh is unlawful.

#### CONCLUSION – six

Item one of the relief claimed is granted, in other words the decision to exclude GDS from Belmarsh prison is quashed.

The mandatory order sought at item two is not necessary because the matters ruled in part 5 but an injunction is now granted as follows in favour of the claimants:

It is declared that the Defendant is obliged to permit GDS to visit the Claimant in Belmarsh prison in accordance with Rule 38, unless and until the Defendant refuses access on substantial grounds relating to GDS character.

No such grounds have been put forward by the Defendant.

#### ANCILLIARY APPLICATIONS

##### (1) APPEAL

Permission to appeal is granted to the Defendant on the following grounds as requested,

- (a) This Honourable court has found as a fact that GDS is an Italian avvocato and the Defendant has not called evidence to challenge it.
- (b) This Honourable court has ruled that it would be an unlawful exercise of the Defendant's discretion to refuse access to GDS on grounds of his character, no such grounds having been established.

##### (2) COSTS

The Defendant sought to avoid the usual order that costs follow the event because

- (a) The ground on which the case had been decided, namely EEC law emerged only on Friday morning, and Mr Johnson conceded the case in good time on Friday afternoon after the 1978 order had been drawn to his attention
- (b) The Claimant has won on only a proportion of the challenge, but that does not mean he is the winner of everything.

#### RULING

This court rejects those submissions. The Claimant has won on the grounds set out in his claim form. He has won on all of the live issues before the court.

The proper order is therefore that the defendant do pay the claimant's costs.