

IN THE HIGH COURT OF JUSTICE

Claim No. CO/1567/2007

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B E T W E E N:

THE QUEEN

on the application of

(1) CORNER HOUSE RESEARCH

(2) CAMPAIGN AGAINST ARMS TRADE

Claimants

- and -

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Defendant

- and -

BAE SYSTEMS PLC

Interested Party

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MINUTE OF ORDER

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Upon hearing Counsel for the Claimants and Counsel for the Defendant

It is hereby ORDERED that:

1. The Defendant's decision of 14 December 2006 to discontinue the Serious Fraud Office's investigation into BAE's Al Yamamah contract is quashed and remitted to the Director for reconsideration.
2. The Defendant shall pay the Claimants' costs subject to (a) the cap specified in the protective costs order and (b) detailed assessment if not agreed.
3. A certificate is hereby granted, pursuant to s.1(2) of the Administration of Justice Act 1960, that the points of law set out in Annex A (attached hereto) are points of law of general public importance involved in the decision.
4. Leave to appeal to the House of Lords is granted.
5. The petition of appeal must be lodged in the Judicial Office of the House of Lords within 14 days after the date of this order.
6. Leave to appeal is granted on condition that the Defendant shall bear his own costs and the Claimants' reasonable costs of the appeal to the House of Lords (to be assessed, if not agreed), in any event, and shall not seek to disturb the order referred to in paragraph (2) above.

Annex A

- 1.(i) Is it unlawful for a prosecutor to surrender to a threat made by a person outside the control of the courts or public authorities of the United Kingdom for the purpose of halting a criminal investigation or prosecution, unless there is no alternative course open to the prosecutor?
- (ii) If so, in reviewing the question whether the prosecutor's reaction was unavoidable submission or an unlawful surrender, to what extent must the prosecutor satisfy the court as to whether there was an alternative course open to the prosecutor?
- 2.(i) Is the court entitled to construe an unincorporated treaty in circumstances where the prosecutor has publicly asserted that in deciding not to proceed he has acted in compliance with the treaty?
- (ii) If so, is consideration of national security permitted under Article 5 of the Convention on Combating Bribery of Foreign Officials in International Business Transactions 1997 only in circumstances which would be regarded as justifying the defence of state necessity in international law, or in other and if so, what circumstances?

*By the Court*