

In the House of Lords

Re: Souzy

Souzy, a 16 year old girl is suffering from kidney failure. The doctors want her to undergo a kidney transplant but she refuses on the basis that she wishes to try out herbalism which she has heard worked for some other patients. However, her mother and father consent and the operation is scheduled.

At first instance, Judge Johnson states that as a matter of fact the operation is not urgently needed to save her life bearing in mind she can continue on dialysis for a significant period of time. He also states that she is competent to refuse treatment. Nonetheless, he decides that the operation is in her best interests and may go ahead despite her refusal on the basis that her parents may consent on her behalf (applying the Court of Appeal precedents of *Re R (A Minor) (wardship: Consent to Treatment)* [1991] 4 All ER 177 and *Re W (A Minor) (Medical Treatment)* [1992] 3 WLR 758).

On appeal Souzy notes that the Court was required under section 6 of the Human Rights Act to take into account her "Convention Rights" (laid out in Schedule 1 of the Act). She argues that since the refusal of a competent adult would have been respected in this situation she has suffered age discrimination of a kind affecting her right to liberty and security and her right to privacy. She argues that this discrimination constitutes a violation of Article 14 when taken in conjunction with either Article 5 or Article 8. The Court of Appeal accepts her reasoning that she has been treated in a different fashion to a competent adult and that Article 14 is brought into play in conjunction with Articles 5 and 8. Nonetheless, by a majority of 2 to 1, it holds that the difference in treatment is objectively and reasonably justified and that hence there has been no violation of Article 14.

Souzy appeals to the House of Lords on 2 grounds:

1. That Article 14 has been violated because not allowing the competent minor the right to refuse medical intervention to the same extent that a competent adult can is a form of discrimination for which objective and reasonable justification cannot be found OR
2. That Article 14 has been violated because even if objective and reasonable justification can be found for treating the competent minor differently under some circumstances, these circumstances would be limited to where the intervention was urgently needed to save life which was not currently the case with this operation.

This problem is taken from the Weekly Law Reports Mooting Competition 2001, was set by Dr Austen Garwood-Gowers of Middlesex University and is provided courtesy of ICLR.