

In the European Court
of Human Rights

Case No. 42789/11

Edwin Stratton v United Kingdom

Statement of Facts and Affidavit of Claimant

Cannabis growing is not connected to the choice of criminal activity directly, that is but the final outcome. What is missed is that we are talking about millions of people, who by being users or small growers do no harm to anybody, and that *the arbitrary choice of criminalisation starts with the government*, never the person, and the individual being otherwise law-abiding is induced into becoming involved in criminal possession, production and supply of controlled drugs.

Pre Amble:

I am a litigant-in-person without professional legal advice. I have tried to secure the protection of four separate domestic courts against an abuse of power by my own government, including an oral permissions hearing for judicial review before Lord Justice Leveson. All these courts refused to accept jurisdiction over my claim, that it is an abuse of the court's process to maintain the application of an unlawful and discriminatory administration of neutral criminal law to persons such as me, who use cannabis peacefully.

I subsequently discovered when private court correspondence was leaked to me, that there had been interference into the trial process by a civil servant lawyer and that the final appeal court was improperly constituted. This Application therefore has two limbs:

1. Human rights violated by merit of the unconscionable conduct by the Executive in the administration of the Misuse of Drugs Act. Such abuse of power by the government abused the courts' processes that affected he, and indeed affect the world at large, being liable to arrest and charge in the first place.

These claims cause the following direct violations of wide applicability to users of controlled drugs:

- Article 1 Protocol 1 – Property rights
- Article 1 Protocol 1 conjunct Article 14
- Article 8
- Article 8 conjunct Article 14
- Article 9(i)
- Article 9(i) conjunct Article 14

2. Article 6 violated by merit of the unfair trial process, particular to the Applicant caused by:

- a) Unconscionable conduct by a civil servant working in the administrative court.

- b) The misidentification that reversed the identities of the parties to the High Court application in paperwork and orders by the Court, by the Single judge refusing the Application for Judicial Review on the papers, and from the Crown in their AOS, that highlighted fundamental misconceptions about the defence. This in conjunction with wilfully made incorrect directions to the court from the administrative court lawyer that then sought to seal these errors to the Order of the court and the AOS of the Crown, by citing authorities to dismiss the Application as impossible, as the described action that the parties being so misrepresented was disallowed.
- c) His Court of Appeal matter being adjudicated upon by a judge J. Andrew Nicol, who ought to have recused himself from the matter having previously made an adverse ruling on the connected case of another activist for legal reform's virtually identical argument in the High Court. It was revealed within the leaked bundle of confidential judges papers that J. Nicol had made his judgment based upon the very same case as was the one now before him in the Court of Appeal, Mr Stratton's.

These claims mean that the trial process was itself unfair in the narrow sense.

I appeal to this Court to declare the current administration of the UK Misuse of Drugs Act 1971 ('the Act') to be a violation of my rights as provided by the ECHR, and to find that I was subjected to an unfair trial process and that my conviction be quashed.

Background:

Affidavit of Edwin STRATTON

My case is entirely distinguished from all others than preceded it. I have looked closely at the Act and identified numerous errors of Ministerial construction, and indeed these same misunderstandings are ubiquitous throughout all previous court judgments. In a nutshell there is a pervasive belief held by the administrators of the Act that they are dealing with "legal and illegal drugs", the former being outside of the Act and the latter being prohibited except for express scientific and medical purposes.

The administrators have misconstrued the Act, and that misconstruction violates human rights. The misconstruction is based upon the false belief that the Act makes some drugs 'illegal', when it is actually designed to regulate persons with

respect to ‘controlled drugs’ that, by their misuse, may be causing social problems. The administrators have substituted the intended regulatory system for reasonably and proportionately regulating human activity, with a system based upon the false notion that an object is ‘illicit’. Finally, the assumption is made that association with ‘illicit’ objects extinguishes one’s human rights.

So, rather than the law regulating human activity proportionate to the harmful effects upon society occasioned by their misuse of a drug, the person becomes treated as an object; devoid of any rights by merit of a designation that the drug they are associated with is intrinsically bad and illicit.

I am interested in cannabis as a medicine and to awaken empathy and to recharge memory and to re-ignite latent cognitive abilities. Yet my claim is not for any special treatment, although as a user of a controlled drug I experience discrimination.

The purpose of my application:

The domestic courts have shown themselves to be entirely unprepared to examine their role in carrying out the rule of law *viz* the Misuse of Drugs Act 1971. They have ruled that the whole matter is non-justiciable, yet there are no guiding criteria in law to steer the administrators in exercising their section 2(5) powers, or indeed any of the regulatory apparatus of the Act in sections 7, 10, 22 and 31. Resultantly, the regulatory apparatus is neglected, and ‘controlled’ drugs are mislabelled ‘illegal’, which fatally undermines their control.

The administrator, by abandoning jurisdiction over the Act itself, causes groups of persons similarly situated to me to be arbitrarily exempted from the operation of a neutral law upon the spurious premise that they are involved with ‘legal drugs’, this concept being a legal fiction in itself. Indeed the government and its drugs advisory body admit that alcohol and tobacco fall squarely under the purview of the Act.

Not only are the problematic users of any drug (including alcohol and tobacco) not outside of the remit of the Act, but by changing the subject of regulation from persons who misuse drugs and cause social problems, to persons being associated with ‘illegal drugs’, the status of the drug user becomes fixed as illicit without reference to any mischief or socially harmful actions at all – all persons are segregated away, as *personas non grata*, outlawed from the possibility of regulation by their supposed new status of being ‘illicit’ irrespective of any need for showing any adverse outcome. Yet the Act proscribes drug ‘misuse’ which is

'having harmful effects' that are 'sufficient to constitute a social problem', not 'drugs' per se.

As drug users, we are no better before the law than slaves, as our conduct is deemed irrelevant because of our association with an object being declared as eternally 'illegal'. This is a misconstruction of the law and an abuse of the powers of the executive. I now seek to expose this prejudice, this misuse of law that denies me my very being and happiness.

The legal principles in overview:

The question for the court ultimately is, with respect to restricting the socially problematic use of any drug or substance, what lawful regulations are necessary, proportionate and reasonable.

Through the application of the Rule of Law, the court must ascertain if government Ministers are fulfilling their statutory duties under the Act and the ECHR. The failure of government to administer the Act lawfully prevents Parliament from being able to consider suitable proposals for amendments necessary to give proper and lawful effect to the Act. The subsequent application by the courts of such a mishandled statute creates an abuse of the court's process.

Thus, first this Court should construe the Act in the light of what I have revealed. It is the case that the numerous historic rights-based challenges to the application of the Act will need to be re-visited entirely from a fresh perspective. It is the case that the Minister's decisions and failures to act are negated by misconstruction, good or bad decisions borne of ignorance of the law are ultra vires. Such failures give rise to a common law failure of government being able to act lawfully, or to be able to give effect to the true purpose of the Act.

In truth the Minister is blind to the possibilities of a more rational system because of the incorrect belief that the Act makes some drugs 'legal', and others 'illegal'. Further she seeks to prohibit all use of such drugs other than for specific medical and scientific purposes.

This approach reveals three errors of law (some harmful drugs being forever 'legal', other drugs being forever 'illegal', and the Act making the use of controlled drugs 'illegal') that underpins the whole administration. Ministerial decisions are, by her choice, fettered and subservient to the International narcotic control agenda that does not bind any Court, Parliament or the ECHR. The Minister has abandoned jurisdiction over the Act re: alcohol and tobacco

users. The Minister is blind to the regulatory apparatus provided by Parliament. She succumbs to an irrational policy of criminalizing even the most peaceful persons concerning themselves with relatively safe drugs.

My claims to equal treatment, freedom of thought, reasonableness, fairness and rationality of policy all reveal a lack of proportionality of state interference into my sovereign rights and legitimate expectation to neutrality; but each must be viewed from the premise that the alleged violations stated herein are the product of unlawful misconstruction of law. The Minister cannot claim good faith to ride roughshod over my rights, she simply is acting unlawfully through her belief that the Act justifies or mandates policies, when in reality it does not. A high threshold is owed by the decision maker to justify policies that effect a war on all citizens through the belief that some altered states of consciousness are culturally acceptable, and that access to all others be not only illegal, but as harmful, frightening and unacceptable as possible.

Using drugs is not illegal but policy is to make it appear so, and to effectively be so. The cited justifications of harms are substantially a direct consequence of the policy itself - the result is the catastrophic cycle of harm. It is virtually impossible to address this politically; drug users have very circumscribed freedoms of expression, association and most other rights because they are declared criminals. The solution can only be the recognition that such a policy is unlawful and unconstitutional - and the expected independence of the judiciary was perhaps the only hope for the citizen given Government's determination to remain fettered to a policy of prohibition, forever (mis)using the powers of the courts to enforce their mandate.

Remarks about freedom of thought:

We are denied all hope of safe access to literally hundreds of substances; many have special enhancement and medically-useful qualities. I am a cannabis user firstly for reasons of medical necessity; healthcare budget restrictions mean I am unable to access the cannabis tincture I have been prescribed by my Pain Consultant, and my body does not absorb alternative pharmaceuticals effectively. Therefore my only relief is via cannabis. However, I appreciate my medicine for many reasons.

Persons such as myself require access to heightened states of awareness to open their doors of perception; I and many other peaceful people need access to our personal chemical catalysts in order to bring benefit to our communities using new modalities of thought. I value freedom of thought and the Rule of Law as much as life itself. This is not an addiction, a delusion or something that I have

lost through the use of it, but I know that I am not who I am without it. Humans in my expert experience benefit greatly from being able to enhance their experience of consciousness, to be able to reflect upon their everyday lives from a sense of otherness; and, to be able to dissociate themselves from the moment of time they currently occupy to ponder their own mortality and to confront their fear. The mind benefits from ‘re-booting’, as it does to re-alignment, re-focusing, re-kindling and the pleasure of being that drugs can, when used wisely, facilitate.

With the use of these substances I recall special memories and achieve respite from sameness. I see my medicine as positive, to experience being re-kindled and re-invigorated of mind, body and soul. Without it I could become wretched. I fear and dread not having the cure for the bitterness caused by not being allowed to be a free and equal being on this planet. For the benefit of all I seek to transform the mal-administration of the current policy into a lawful one that respects the natural rights of man.

The law abhors arbitrariness, yet this administration manifests stark arbitrariness between the treatment of people who use different drugs; an inequality of treatment suffered by persons, not an inequality of treatment of drugs. The consequences are terrible for persons on both sides of the artificial divide created by the ‘separate but equal’ administration of the Act as it is applied today. The de facto, not de jure, discrimination between users of alcohol and tobacco on one side, and users of ‘illegal’ drugs on the other – criminals - is justified by government solely on ‘historical and cultural precedents’.

But the ‘illegal/legal’ divide is a legal fallacy, and it is a misuse of the Act to exclude persons from the operation of the law. This is because by declaring a substance ‘illegal’, our leaders have stopped short of realizing the regulatory scope of sections 7, 22 and 31 of the Act, and thus they cannot give proper consideration to giving effect to the powers afforded to them by Parliament.

Parliament has never been asked to control users of the harmful drugs alcohol and tobacco, instead they afford controversial consumer legal protections on those who enjoy and even misuse alcohol and tobacco, because the Minister whose responsibility it is to drive the Act will not do so reasonably or rationally.

This is due to her fallacious belief in ‘legal drugs’ and ‘illegal drugs’, and the false belief in the Act as a tool of prohibition. All persons concerned with mind-altering substances should be included under the Act with proper assessment and criteria set out.

What I am asking this court to do is to recognise that the Act does not regulate objects (so-called ‘illegal’ or ‘illicit’ drugs), but the reality that it is persons who

are arbitrarily criminalized based upon a very intimate chemical relationship, some would say a genetic pre-disposition, that defines their existence. Drugs are not the same as ordinary commodities, this is a timeless concern that transcends cultures - it is the contemporary curtailment of most forms of chemically induced transcendence that de-humanizes what is in substance, entirely human. Current policy causes much physical, social and mental harm to drug users based on nothing more than historical and cultural intolerance of some drug users and not others. Treating like cases alike and unlike cases differently is an axiom of rational behaviour and I entreat this court to apply it.

Thankfully Parliament enacted a much better Act than one which can only give effect to the UN mandates; for in it they enshrined a regulatory and flexible instrument; sadly its nuances were lost on the persons charged with giving proper effect to it, the Ministers of various governments. There is no reason why the Act could not be administered as its black letters instruct, to differentiate between persons engaged in socially harmful misuse, and persons engaged in the peaceful use of drugs. By focusing on one's behaviour as it contributes to social problems as the Act provides, and not on whether a drug is 'legal' which the Act does not provide, then regulation and liberty can be balanced correctly. The focus on specific drugs for specific purposes has preoccupied the courts in many other cases, and this with respect is entirely the wrong approach when one considers that a peaceful person has a legitimate expectation to be left alone. In terms of health concerns; the Act is to control persons and their activities with concern to property, and is the last resort and ought only to be considered if the rights of persons engaged in equally harmful drug use are also so extinguished or restricted.

Persons are entitled to a proportionate and equal administration of law, one that protects against harm whilst respecting liberty for peaceful pursuits and community safety. It is the ignorance of the true nature of this Act that makes the decision makers blind to the possibilities of the correct and beneficial interpretation of the Act as it is written. As a result of their ignorance of the Acts words, they believe the Act is only a tool for prohibition, and as such they believe they cannot consider 'making alcohol and tobacco illegal'. This indeed is their reason for imagining political suicide by bringing alcohol and tobacco (users) under the schedules of the Act, based on their own error of law.

I experience a form of 'tyranny of the majority' between drug users, although I have hurt no person. However the irony is that my rights are your rights: we are all denied choice or even a possibility of being able to have a choice, ever. It is not difficult to differentiate between use and misuse of drugs; the reason why this is elusive is that we have been led into viewing the problem from the perspective of the drug, rather than identify a mischief such as adverse behaviour of a class of drug users.

We have enacted an Act of Parliament drafted to be so capable of doing this; to ignore the regulatory apparatus provided in the Act, or to believe incorrectly that the Act mandates something that it does not, is to abandon proper governance.

This Applicant does not seek to bring politics into the legal arena, rather I object to the introduction of it by those charged with administering it equally for the benefit of all peaceful citizens.

Timeline:

May 28, 2008: Arrested with cannabis plants.

October 1, 2008: Charged with being concerned in the production of a controlled class C drug in contravention of s4(1) of the Misuse of Drugs Act 2008.

October 8, 2008: Hearing at Waltham Forest Magistrates' Court. Granted leave to apply for judicial review in the High Court.

March 5, 2009: High Court, London: Deputy High Court Judge John Howell QC denies the application for judicial review on the papers.

July 1, 2009: High Court, London: LJ Leveson and Wilkie J refuse permission for judicial review at an oral hearing.

April 28, 2010: Snaresbrook Crown Court. Abuse of Process argument rejected by Judge Tudor Owen.

April 29, 2010: Snaresbrook Magistrates' Court. Stratton was convicted of the cultivation of cannabis, and sentenced to three months in prison, suspended for a year.

August 20, 2010: Appeal Court, London. Judge J Akenhead refuses leave to appeal against conviction.

Feb 15, 2011: Appeal Court, London. L.J. Laws refuses leave to appeal against conviction at renewal hearing.

Legal Argument:

From the outset, Stratton argued that the Executive has misconstrued the Act and consequently abused the discretions conferred in the Misuse of Drugs Act prior Stratton's activities with cannabis. He argued under common law administrative principles that the admitted unlawful construction of the administrator manifested multiple common law claims that gave rise to two inequalities of treatment under criminal penalty:

- i. a failure to treat like cases alike, viz the unequal application of the Act to those concerned with equally harmful drugs without a rational and objective basis; and
- ii. a failure to treat unlike cases differently, viz the failure to treat those who use controlled drugs peacefully as a different class from those who do not.

Those who produce alcohol and/or tobacco are the analogous comparators.

These two inequalities of treatment constitute unequal treatment at common law and unlawful discrimination contrary to Art 14 of the Human Rights Act 1998 within the ambit of Arts 5, 8, 9 and Protocol 1 Article 1 on the grounds of property and legal status.

The Misuse of Drugs Act 1971 c.38 as administered, and as subsequently applied to Stratton, unjustifiably discriminates between drug users being a class of persons engaged in directly analogous activities with equally harmful drugs property based on majority preference, rather than justifiably discriminating on the actual or possible outcome of the use of that property as the Act suggests in title and text.

And since the Act regulates human action, not drug action, this subjects Stratton to two unjustifiable discriminations:

- i. an under-inclusive and arbitrary discrimination, viz Stratton and the drugs of his concern are subject to the Act's controls yet the equally or more harmful drugs alcohol and tobacco and persons concerned with them are not subject to the Act's controls; and
- ii. an over-inclusive and disproportionate discrimination, viz Stratton's peaceful action re controlled drugs is regulated in the same manner as persons causing harm.

Together these two unjustifiable discriminations deprived Stratton of his liberty and subjected his thoughts, his private life and his property to arbitrary regulation contrary to Article 14 of the Human Rights Act 1998 on the grounds of property and legal status.

The claim also is free-standing in respect of Articles 5, 8, & 9(i).

Government unconsciously admitted abusing the Act's powers, and the inequalities of treatment in Command Paper Cm 6941 whilst defending the actions on subjective and/or incoherent grounds not rationally connected to the Act's policy and/or objects.¹ Government justified the discrimination on 'historical and cultural precedents'.

Scrutiny of government's admission reveals that the abuse and the resultant inequality of treatment occurs because:

- i. Parliament has not stated an explicit policy nor fixed any triggering circumstances to guide the Secretary of State for the Home Department ("SSHD") in exercising his powers afforded by s.2(5) of the Act, instigating the control of a drug;
- ii. Government has fettered the SSHD to an overly-rigid and predetermined policy;
- iii. The SSHD has failed to understand and give effect to the Act's policy and objects; and
- iv. The SSHD has arbitrarily exercised s2(5) and the incidental discretionary powers.²

¹ *The Government Reply To The Fifth Report From The House Of Commons Science And Technology Committee Session 2005-06 HC 1031 Drug classification: making a hash of it?* October 13th 2006 p.24.

² Cf. *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030-1034.