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ra-shi-O dè's'i-dèndi

In other words, *Ratio Decidendi* is a legal rule derived from, and consistent with, those parts of the legal reasoning within a judgment on which the outcome of the case depends, and which legal precedent is established and law is created.

A legal case study written by me for Ratios:

R (*on the application of Corner House Research)* v *Director of the Serious Fraud Office \[2008\]
UKHL*

In this case the Director of the Serious Fraud Office (the Director) had the power to independently decide whether to investigate **BAE systems plc. (BAE)** of the suspected offence of 'serious or complex fraud'. The Director exercised this independence to discontinue the investigation after **representations from the Prime Minister, and other state representatives**, that it was not in the 'public interest'. This was because Prince Bandar, **advisor to the Kingdom of Saudi Arabia, BAE's client**, communicated a potential threat in which 'British lives on British streets were at risk'.

Corner House Research submitted a judicial review claim that *inter alia* the Director's submission to a foreign threat was contrary to the constitutional principle of the rule of law. The Divisional Court held his decision unlawful, though the House of Lords allowed an appeal finding the Director had not 'surrendered his discretionary power to a third party'. However, in the House of Lord's judgment it was suggested that the obligation to protect lives may be more binding than the rule of law.

The most basic normative force at work in this case is the foreign threat. The Director himself held his decision was exclusively influenced by this foreign threat even when **it was unverified**; the Divisional Court acknowledged this as Prince Bandar had no opportunity to dispute allegations of the communicated threat. Legal rules cannot be the normative force as the Director's decision under the rule of law was found subject solely to the judicial review appeal, not legislation or other law, such as article 5 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.

The external threat as the normative force is confirmed in paragraph 126 and 127 of the case report. The right of a state to protect the lives of its citizens against a foreign threat was held to be an essential fundamental right to which a state may decide their course of action regardless of international treaties. International treaties which protect and assert the right to life's special privileged status due to its content and necessity in preserving democracy. This indicates that legal rules concede to the normative force of a foreign threat.

Thus, the Director's decision based solely on this normative force was not an unlawful submission contrary to the rule of law. However, it was suggested that the European Convention for the Protection of Human Rights and Fundamental Freedoms (incorporated in schedule 1 to the Human Rights 1998) (the ECHR), if considered, could have obligated the Director to the same decision so as to protect and safeguard British

citizens. Consequently subjugating the rule of law as "[i]t is the duty of the court to do all it can to respect and uphold that principle."*. Essentially, a suggestion that obligation to protect the lives of British Citizens may be more binding than the rule of law.

Baroness Hale of Richmond's *"obiter dicta"* allows further insight. She emphasised that although the Director had discretion to consider risk to life and national security, it was *"common ground"* this did not include personal threats. She contended that *"National security" ... "was not an issue here. Public safety was".*¹⁰ and that *"a distinction between the personal and the 'public interest'"* must imply importance to the public as a whole. Connected with the above exploration of the ECHR one can see public safety, and the right to life of British citizens, being held opposite to the rule of law invested in the Director.

This inferred synthesis between 'public interest' and article 2 of the ECHR clearly expressed a politics of legal reasoning. The analogy that judges and lawyers are *"boundary riders maintaining the integrity of the fences that divide legal constraint from the sphere of freedom of action"*¹⁰ helps indicate this. The freedom of action in this case was submission to a foreign threat. ***Taken to the absolute a threat of war.*** Political reasoning is then inevitable when considering a foreign threat, public safety, the right to life of British citizens, military action, and the rule of law.

Taken further the case may essentially indicate a contention between protection of the rule of law secured in a public official and *bona fide* decisions leading to potential military action. **Here, the judiciary, and the Director, do not, and should not have** ***locus standi*** **as can be interpreted in the** ***Ratio Decidendi***. This powers lays with the executive derogated from the royal prerogative. Thus, anything less than a politics of legal reasoning would have been absurd, with the inference of the prevalence of the ECHR more so, regardless of the implications for the rule of law.

****Ergo****

1. Look closer
2. Find the Ratio Decidendi
3. Find the £\$€¥
4. Invest