IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 4/2024
[2024] NZSC 49

BETWEEN	DAVID IKENNA OBIAGA Applicant
AND	ATTORNEY-GENERAL Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: G H Allan, T Mijatov and S A Davies for Applicant
A M Powell and R E R Gavey for Respondent

Judgment: 6 May 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant brought an application for judicial review, contending that reg 48(c)–(e) of the Corrections Regulations 2005 (Regulations) go beyond the empowering legislation, the Corrections Act 2004, because they allow Ara Poutama Aotearoa | Department of Corrections (Corrections) to fix security classifications by reference to considerations which are not strictly confined to the risk posed by the prisoner.[1] The relief sought in the statement of claim is a declaration that the relevant sub-regulations are ultra vires and a declaration that relevant provisions of the Prisons Operation Manual and the associated forms and processes (together, the Review Policy) are unlawful.

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[1] See Corrections Act 2004, ss 47(1) and 202(f).

Regulatory framework

[2] Regulation 48 prescribes the matters that must be taken into account when a prisoner's security classification is reviewed, in addition to the risk factors set out in reg 45. The matters listed in reg 48(c)–(e) are the prisoner's co-operation with staff, misconduct, involvement in reported incidents, and motivation and achievement in relation to their management plan. The applicant concedes these matters may be relevant to risk in some circumstances, but he says that these sub-regulations are overbroad, as is the Review Policy that implements the Regulations.

Procedural history

[3] The claim was dismissed by the High Court[2] and Court of Appeal.[3] The Court of Appeal relied on the presumption of validity of subordinate legislation and the breadth of the empowering provisions.[4] It found that the Regulations respond to policy directives in the legislation and noted that they allow for appeals and reviews.[5] It dismissed as misconceived the applicant's argument that reg 48(c)–(e) are ultra vires because Corrections "can do better".[6] The Court also found the Review Policy to be lawful for similar reasons.[7]

[4] The applicant seeks leave to appeal. The respondent accepts that the issue is intrinsically important but says an appeal has insufficient prospect of success to warrant leave.

Our assessment

[5] We accept that the security classification system for prisoners is important. Security classifications have a major impact on prisoners' conditions, access to rehabilitation and duration of imprisonment. Classification decisions may well justify an appeal to this Court in an appropriate case.

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2 *Obiaga v Department of Corrections* [2022] NZHC 3146 (Cull J) [HC judgment].
3 *Obiaga v Attorney-General* [2023] NZCA 658 (Brown, Gilbert and Wylie JJ).
4 At [34]–[35].
5 At [39] and [42]–[43].
6 At [41] and [51].
7 At [54]–[61].

[6] But we do not find this case to be an appropriate vehicle, because the Court is being asked to assess Corrections' processes in the absence of a factual context. The High Court judgment records that the applicant was twice assigned to maximum security only to have his classification reduced upon review, but he did not challenge those decisions.[8] It is apparent from the judgment of the Court of Appeal, which makes only passing reference to his circumstances, that the argument was conducted in the abstract. Indeed, the applicant is no longer in prison. This matters because the proposed appeal has substantial implications for the management of prisons, and the applicant concedes that there are circumstances in which the considerations mentioned in reg 48(c)–(e) are relevant to risk. The Courts below did not have to engage with these matters because they dismissed the claim. Were this Court to entertain relief, it might have to consider a remedy that is more limited or nuanced than a declaration that a given sub-regulation is ultra vires the legislation or that Corrections' policy towards that sub-regulation is unlawful. This would be an inappropriate exercise without a factual context.

[7] For these reasons the application for leave to appeal is dismissed. As the applicant is legally aided, there is no order as to costs.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

8 HC judgment, above n 2, at [1] and [74].