

**Timonina v Government of Seychelles
(2007) SLR 254**

Frank ELIZABETH for the petitioner
Ronny GOVINDEN, Deputy Attorney-General

Order delivered on 30 July 2007 by:

PERERA J: Upon an application for habeas corpus being filed under section 352 of the Criminal Procedure Code for the production of the body of Yulia Timonina, who had been declared a Prohibited Immigrant, from the custody of the police and immigration officers, this Court, by order dated 27 July 2007 issued order to produce her today (30 July 2007) at 9.00 a.m, when the Court would proceed to make a further order. This order was complied with, and the said Yulia Timonina was produced in Court.

Mr Elizabeth, counsel representing her, filed a motion and affidavit averring that the detention of Yulia Timonina was illegal or improper, and hence she should be forthwith set at liberty.

However, after instructions, Mr Elizabeth called upon the Court to make a release order as a sequel to the application for habeas corpus filed on 27 July 2007 upon which the order for production of the corpus was made. In these circumstances he withdrew the second application which was based on section 352(1) (b) of the Criminal Procedure Code.

Section 352(2) provides that the Chief Justice may from time to time frame rules to regulate the procedure in cases under this section. However, as no such rules have been made, this Court should follow the practice and procedure of the High Court of Justice in England, as provided in section 4 of the Courts Act .

Ian A Macdonald, on Immigration Law and Practice (2nd ed), examining the procedure of the High Court of England states at page 402 thus -

Where a challenge is being made, whether by way of habeas corpus or judicial review, to the legality of the detention, as in the illegal entrant cases, the High Court has always regarded itself as having an inherent jurisdiction to grant bail pending the full hearing of the Application. (*R v Spilsbury* [1898] 2 QB 615, *Re Amand* [1941] 2 KB 239).

Mr Govinden, Deputy Attorney-General, resisted the release of Yulia Timonina on bail and submitted that she is being detained legally under the provisions of section 24(1) of the Immigration Decree.

With respect, the legality of the detention is not in issue now, as Mr Elizabeth has withdrawn his motion filed on 30 July 2007.

Yulia Timonina has filed a petition before the Constitutional Court (case no 5/2007) alleging a contravention of her rights under article 25(1) of the Constitution. The judgment is due to be delivered in that case tomorrow (31 July 2007 at 2 pm). In the judicial review case filed by her (case no 173/07) a single Judge of the Court of Appeal has, on an application for stay of execution of an order refusing leave to proceed, granted a stay order, which reads, inter alia that,

Accordingly, I suspend the execution of the "order of removal" until the determination of her application by the Supreme Court.....

The judicial review application is therefore due to be heard on the merits on 2 August 2007 at 9.00am.

In these circumstances, acting pursuant to the practice and procedure of the High Court of Justice in England, Yulia Timonina is released on bail until this Court determines the judicial review application, on the following conditions —

1. As already ordered by Hodoul JA in his order dated 22 June 2007, she must refrain from doing any act, overt or covert, alone or with others, which is "inimical to the public interest".
2. She shall report to the Anse Etoile Police Station every day at 9 am until the judgment in the judicial review case is delivered.
3. If she breaches any of these conditions she will be liable to be further detained in custody.

Record: Civil Side No 173 of 2007