Case No. CO/3118/2006

Neutral Citation Number: [2011] EWHC 3667 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Tuesday, 6 December 2011

B e f o r e:

MR JUSTICE CRANSTON

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Between:
THE QUEEN ON THE APPLICATION OF M

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

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Mr M S Gill, QC and Mr J Patel (instructed by Stanley & Co Solicitors) appeared on behalf of the **Claimant**
Mr P Patel (instructed by Treasury Solicitors) appeared on behalf of the **Defendant**

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J U D G M E N T

MR JUSTICE CRANSTON:

Introduction

1. This case does not reflect well on either the conduct of the Secretary of State (or at least those for whom she is responsible) or on the administration of justice. At a very late point in the proceedings, five years after they were instituted, the Secretary of State finally conceded on behalf of her department the unlawfulness of the actions in January 2006 in detaining and removing the claimant's family from this country. As regards the administration of justice the case can be characterised as having, at the very least, an unfortunate procedural history. The crucial point is that although this judicial review was filed in April 2006 until now it has not been finally determined. The reasons for this are explained later in the judgment but the consequent delay has compounded the adverse impact on this family of their unlawful removal. The principal relief sought through this judicial review is the return of the family to the United Kingdom, on the somewhat novel ground of restoring them to the position they would have been in but for the unlawful conduct, a remedy which in the books is still given the Latin tag restitutio in integrum.

Background

2. The first claimant, the husband and father, was born in Sri Lanka in 1959. He is a Tamil. In 1987 he married the second claimant. A son was born on New Year's Day the following year and a daughter some five years later. On the claimant's account, because of the civil war in Sri Lanka, he was in hiding from 1988 until his arrest in February 1995. Again on his account the family were able to bribe their way out of the country in June that year. They arrived in Germany, via Rome, on 28 June 1995. The family applied for asylum but that was refused in November 1996. The following year a third child, another daughter, was born. Despite the refusal, the family continued to live in Germany. However, on the claimant's account, the family was warned that they would be returned to Sri Lanka. On 10 March 1999, they came to the United Kingdom.

3. On arrival at Dover the family claimed asylum. Later in March they were given temporary admission. However, on 21 June 1999, the Secretary of State decided that they would be returned to Germany. This was pursuant to the Dublin Convention, now the Dublin Regulation. A week later Germany accepted responsibility for the family under the Convention. However, the family began to live in London and they were given a tenancy on a house in Edgware in London. The Secretary of State certified their claim on third country grounds on 7 July 1999 and on 17 July, removal directions were set. These were cancelled when judicial review proceedings were issued. Nothing seemed to happen until 17 November 2001 when the Secretary of State recertified the claim, although the family were given further temporary admission in early 2001, with a condition to attend an interview. Meanwhile, in 2001, the mother's mental health had led her to being admitted to a mental health unit. The Secretary of State requested medical reports in January 2002. The judicial review was withdrawn

in February 2002. In September 2003, His Honour Judge Dangor made a residence order for the children in favour of the father.

4. Still nothing was done to remove the family and they continued to receive asylum support. At least in part that was because of the mother's condition. In March 2005 the law firm which had been representing the family was closed down by the Law Society, then the regulatory body. In response to the Secretary of State's announcement in mid-2005, of a one-off family concession policy for families claiming asylum before October 2000, the first claimant himself himself lodged an application. He was told incorrectly that the family were disqualified because one of them, unspecified, had a criminal conviction. Once that error was corrected the Secretary of State gave as a reason for ineligibility that the case was excluded from the concession because Germany was responsible for the family's asylum claim.

5. In November 2005 the Secretary of State requested further medical reports. In response, the first claimant sent a medical report, which referred to his wife's re-admission to hospital in January 2004, her diagnosis of delusional psychotic disorder, undifferentiated schizophrenia, and her subsequent discharge from hospital in March 2005. He said he would obtain a further up to date report. In early December 2005 the Secretary of State refused the claimant's Article 3 claim under the European Convention on Human Rights ("ECHR"), without the benefit of any further medical report, and certified the claimant's human rights claim as clearly unfounded. Nothing was said in relation to any Article 8 claim. Those December letters never reached the claimants until they were served at the time of removal.

6. Then in mid-December 2005 the decision was made to remove the family to Germany. The family still had no legal representation. Same day removal was authorised because of the state of the mother's mental health, it being thought that that would minimise the risk of inflaming her condition. Her mental health needs were not highlighted as exceptional. There was no pastoral visit beforehand, then a part of the family removal policy. For an unspecified reason, the removal was regarded as raising exceptional risks. Same day removal to Germany required a morning departure since the Germany authorities demanded that persons arrive by 2.00 pm, no doubt so that they could be taken at a reasonable hour to where they were to stay.

7. Removal directions were issued for 10 January 2006. In preparation for removal, Magistrates granted a warrant to enter the Edgware home. The family had no specific warning that they were about to be removed since the letters had never been served and there was no pastoral visit. Immigration officers arrived at about 2.20 am in the morning. The family left the premises just under an hour later, with some of their belongings. Their flight to Germany was at 7.50 am. They were accompanied by escorts including at least one medical escort. The flight arrived in Hamburg at about 10.50 am and they were handed over to the German authorities. They were then sent by train via Bremen, to Brake, Lower Saxony. Since that day, 10 January 2006, the family have lived in Brake.

8. The Secretary of State now accepts that the removal of the family that day was unlawful. That concession, as I said earlier, was made relatively recently. This is to

anticipate because, before these proceedings reached that point, a great deal of water flowed under the bridge. In April 2006 this current judicial review was initiated. The first claimant had instructed new solicitors by telephone from Germany. A specific relief the claimants sought was an order quashing the removal decision and directing the Secretary of State to take steps to allow the family to return to this country. Permission to apply for judicial review was ultimately granted in early 2007. There was a hearing in June 2007 when the issues were narrowed and it was accepted that the December 2005 letters had never been served. Disclosure by the Secretary of State followed. The judicial review was heard by this court over two days in June 2008. Then, unfortunately, the Judge fell ill. Although an order refusing relief was made in January 2009, it was not until well over a year after the hearing, on 21 August 2009, that judgment was handed down. An appeal to the Court of Appeal was compromised in July 2010 when the parties agreed that, because of the Judge's misunderstanding of the factual matrix, the appeal should be allowed and his order set aside.

9. Thus the matter was remitted to this court. The Secretary of State's position was that any issue of the family's return to, and right to remain in this country, could not be addressed before their current situation was known. A hearing in this court in February this year was vacated so that further information could be obtained. A consent order sealed on 7 February declared:

> "The detention and removal of the claimants on 10.1.2006 was unlawful."

The order continued that the relevant decisions were quashed and that further evidence on matters of relief was to be filed. There would be a one-day hearing to determine whether further relief, if any, was to be granted, in particular the return of the family to the United Kingdom, and whether their unlawful removal and detention on 10 January 2006 amounted to a breach of their rights under Articles 5, 8 and 14 of the Convention. The statement of reasons accompanying the order signed by both parties said, amongst other things:

> "The circumstances of the claimant's removal are very much in dispute [and] it is not necessary to resolve that dispute in these proceedings."

It also referred to a letter of 18 January 2011, shortly before the consent order was signed, in which the Secretary of State accepted the unlawfulness of the removal since its effect in the facts of the particular case was to deny access to legal advice.

10. Pursuant to that February order, there is now further information before the court about the family. In short, as well as the mental condition of the mother, it reveals that the son is also suffering. Both are being treated by the psychiatric services in Germany. Indeed it seems that the whole family have problems of one sort or another, which are attributed in part to the events surrounding their removal. They have never developed settled lives in Germany and according to Dr Brand, the treating psychiatrist, the family is socially isolated. Dr Brand opines that the conditions for addressing their problems would be better in this country, although he adds that, given that they have now been in Germany for five years:

"It cannot be assessed whether a return to England may entail fresh difficulties, especially for the children."

11. There is also a report from an independent social worker from this country, Nick Crichton, who visited the family in Germany, albeit before they were given leave to remain there until 2014. From Mr Crichton's report it is clear that the father and son clearly wish to return to this country. Although it has certainly not been easy for the daughters, they seem to have adjusted to life in Germany. Both are in full-time education and have friends. Nevertheless, both express a preference to being in this country. In a recent statement the first claimant, the father, is critical of the German authorities and expresses fear that they might return the family to Sri Lanka.

12. There is also a statement by a senior official of the UK Border Agency. On the basis of enquiries with counterparts in Germany, he explains that since the family have been given leave to remain in Germany until 2014, there is no immediate or long-term prospect of their removal to Sri Lanka. However, the family solicitor, Mrs Gorsia, has also made enquiries, in her case with the German organisation Proasyl, and, according to them, the situation is less certain. In any event, the father and elder daughter have permission to work in Germany. Because of their health, the mother and son cannot work. The UKBA official, in his statement, also says that, if returned to the United Kingdom, the family would be given temporary admission while their entitlement to remain here was considered. He continues that although the Secretary of State will accommodate the family, they cannot expect to be housed in Edgware if they were unable to find accommodation there themselves. The UKBA's dispersal policy, and the lack of available housing in London, means that most accommodation is found outside the capital. The official then asserts that any fresh or renewed asylum claim would be certified on third country grounds. In any event, since the family have leave to remain in Germany until 2014, they could also be returned to Germany under Article 9.1 of the Dublin Regulation. That provides that where a member state has issued a valid residence document, it shall be responsible for examining the application for asylum.

The Issues

13. Under the order of this court of 7 February 2011 the issues before me are of narrow compass and are simply remedial. The principal relief the family seek is for them to be returned to the United Kingdom. So it is my task to decide whether there should be a mandatory order requiring the Secretary of State to return them from Germany. There is also the issue of damages payable for unlawful detention. On the family's behalf, it is said by Mr Manjit Gill, QC that the action of the immigration officers was deliberate and amounted to a misfeasance in public office. In my view it is not appropriate for me to consider that issue at this hearing. As I have explained, the order of 7 February was adamant that the circumstances surrounding the detention and removal of the family on 10 January 2006 were hotly contested. That being the case, there would need to be a hearing where evidence was called, if the factual background to the decision and the nature of the events as they unfolded were properly to be determined. Judicial review is not generally appropriate to resolve that type of matter.

In any event, given the concessions the Secretary of State has made, I do not consider it a necessary prerequisite to granting relief.

14. Those concessions of the Secretary of State are, as the order of 7 February established, that the detention and removal of the family on 10 January 2006 were unlawful. In helpful and realistic submissions to me on behalf of the Secretary of State, Mr Parishil Patel has accepted that the result of the concession is that there was a breach of Article 8 of the Convention. The family had a private life in the United Kingdom prior to their removal and, since the interference with that private life was not in accordance with the law, Article 8 was thus violated. Mr Parishil Patel also concedes that, since the detention of the family between the early hours of the morning of 10 January 2006 until their arrival in Germany was unlawful, there is a breach as well of Article 5 of the Convention. He denied however that there was a breach of Article 3. While the mother was suffering from mental illness, the threshold for establishing a breach of Article 3 is very high given that psychiatric treatment is readily available in Germany, a fact borne out by what has subsequently happened with both mother, and now, son. For the family, Manjit Gill, QC, contends that it was the circumstances of the removal on 10 January 2006 which gave rise to a breach of Article 3. As I have said, the nature of those events cannot finally be decided in this judicial review. In view of the accepted breach of Articles 5 and 8 of the Convention there is, in my view, no need to resolve the Article 3 issue. What is crystal clear is that there have been breaches of the Convention. The impact of those breaches on the family have been accentuated by the conduct of the Secretary of State, in particular in not conceding the unlawfulness of her department's actions until relatively recently, and the evident flaws in the administration of justice. Given the accepted breaches I turn now to the remedies which follow.

Return to the United Kingdom

15. Restoring persons to the position they were in before a wrong was committed is a thread running through a great deal of our remedial law. Restitutio in integrum is a specific remedy operating in the law of rescission of contracts and gives rise to nice questions as to whether both sides of a transaction can be undone. In our law of domestic wrongs a court can order the return of property taken as a result of a tortious act. In the law of damages we attempt to place the victim in the same position that he or she would have been in before a loss was caused, for instance, by a negligent act.

16. Reparation through restitutio in integrum, attempting to place persons back in the position that they were in before a wrong, is also a possibility in international law. In the Chorzow Factory case in 1928, the Permanent Court of International Justice said that the essential principle was that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would probably have existed if the act had not been committed: PCRJ, Series A, No. 17, 128, 47-48, [68]. That was a case where Poland had taken possession of a factory and Germany was claiming against it. The court held that payment of compensation should only follow if restitution in kind could not be made.

17. In discussing the draft articles of the International Law Commission's work on state responsibility, Professor James Crawford of Cambridge University discusses restitution in international law in the form of releasing persons from detention and returning property wrongly seized: The International Law Commission's Articles on State Responsibility, 2002, 213. In his analysis restitution, in the case of property seizure, is not impossible simply because of legal or practical difficulties, even though the responsible state may have to make specific efforts to overcome these at 216.

18. Restitutio in integrum has also featured in the jurisprudence of the European Court of Human Rights when deciding on just satisfaction under Article 41 of the Convention. There are three decisions of immediate relevance. The first is Vasilescu v Romania [1998] 28 EHRR 241, a case where 327 gold coins had been seized by the police during a criminal investigation. No prosecution followed. The police decided to keep the coins and the Supreme Court of Romania held that it was within the sole jurisdiction of State Counsel to entertain the applicant's application for the return of the coins. The European Court of Human Rights held that if reparation could not be made for the consequences of the breach of the Convention, the court could afford the injured party such satisfaction as appeared to it to be appropriate. In that case it held that the return of the items in issue would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had been no breach of Article 1, Protocol 1, of the Convention:[61]. Since the government stated that it was unable to return the coins, the court ordered compensation.

19. Papamichalopoulos v Greece [1995] 21 EHRR 439 was a claim for just satisfaction by 14 applicants whose land had been seized unlawfully by the Greek State in 1967. The court held that Greece was obliged to return the land to the applicants within six months, failing which compensation had to be paid. The court said that it followed that a judgment in which the court found a breach imposed a legal obligation on a state to put an end to the breach and to make reparation for its consequences, "in such a way as to restore as far as possible the situation existing before the breach": [34]. The court continued that it was up to the contracting states to choose the means whereby they would comply with a judgment of the Strasbourg Court, but:

> "If the nature of the breach allows of restitutio in integrum, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself."

20. A third case decided by the Strasbourg Court is Brumarescu v Romania [2001] 33 EHRR 36, another case involving the deprivation of property in breach of Article 1 of the First Protocol, but also the case where the court had earlier found that Article 6 of the Convention had been breached. The Grand Chamber held that, in the circumstances of the case, the return of the property would put the applicant, so far as possible, in a situation equivalent to one that it would have been in if there had been no breach of Article 1 of the First Protocol:

> "If the nature of the breach allows restitutio in integrum, it is for the respondent State to effect it. If, on the other hand, national law does not allow or allows only partial reparation to be made for the consequences of

the breach, Article 41 empowers the court to afford the injured party such satisfaction as appeared to it to be appropriate.":[20]

21. There is no decision in our law on all fours with the present situation, where a party seeks return to this country after unlawful removal under immigration powers. There are decisions, however, where the court has ordered return of a person as interim relief. In an unreported decision in 1999, R v Secretary of State for the Home Department, ex parte Shanmuganathan, 11 March 1999, the Court of Appeal was faced with a situation where, as a result of a series of misunderstandings, the necessary order to concel the applicant's removal had not reached the immigration authorities. The Court of Appeal made an order that all reasonable practical efforts should be made by the Secretary of State to facilitate the immediate return of the applicant to the jurisdiction.

22. A comparable situation was faced by Crane J, sitting in this court, in Changuizi, R (on the application of) v Secretary of State for the Home Department [2002] EWHC 2569 Admin, [2003] IAR 335. There the claimant had been removed to Austria in breach of an undertaking given by the Secretary of State and Crane J ordered that he should be returned. The case nearest to the point raised in this judicial review is E & Ors, R (on the application of) v Secretary of State for the Home Department [2006] EWHC 3208 Admin, although in the circumstances of that case it seemed that the return of the family would have been in violation of the law of the country to which they had been returned: [66]. In the result, Black J (as she then was) refused to issue a mandatory order: [67]. It appears that the jurisprudential basis of any such mandatory order was not agitated before her.

23. In this case I have come to the conclusion that the Secretary of State must return the family to this country. Mr Parishil Patel fairly accepted that the issue was one for my discretion but that it was incumbent on me to take into account a range of considerations, including a need for good administration, delay, and the utility of granting the relevant remedy. He submitted that the family had now been in Germany for six years. They had already obtained relief by the quashing of the removal decisions and the declaration that the acts of the Secretary of State, in detaining and removing them, were unlawful. In his submission it was not appropriate for me to enquire into the hypothetical situation which existed in 2005 as regards any claims which the family might have had under Article 8 or under Home Office policy. That was a reference to a submission by Mr Gill, that if the family had been able to remain here a short while longer than 10 January 2006, they would have fallen within the terms of the seven-year policy which existed at that time to the benefit of families with children.

24. Mr Patel also submitted that neither in 2006, nor if returned now, did had the family have any strong foothold in this country. In 2006 there was no entitlement to be here. Their removal to Germany had been delayed but that was because of the judicial review in 2002, and subsequently because of the medical condition of the mother. At all times they would have been aware of the precariousness of their situation. Albeit that they were establishing a private life in Edgware, that was sustained in the knowledge that they should not be here.

25. As to the situation which would obtain if they were returned, Mr Patel referred to the recent statement of the UKBA official and to the great difficulties which he said the family would face in advancing a right to remain here, given the operation of the Dublin Regulation and the lack of any strong Convention protection. In Mr Patel's submission, albeit that the removal and detention of the family had been unlawful, that provided no basis for any strong argument to advance to the Secretary of State for the future. If they were returned, the Secretary of State would consider whether to exercise her discretion to grant the family leave to remain, but it was unlikely that she would consider that the circumstances were exceptional or that the past prejudice suffered would determine the issue in their favour. Finally, Mr Patel conceded that while the best interests of the children were a factor which had a bearing on my discretion, there was the disruption which would be caused to them if they were returned to this country and then, pursuant to the Dublin Regulation, removed yet again to Germany.

26. As I have said, in my view I should exercise my discretion to order the Secretary of State to return the family to this country. The primary factor bearing on that decision is the conduct of the Secretary of State, or at least those for whom she is responsible. Firstly, there is the conduct leading up to the removal in 2006. At the outset there was the mistaken assertion in the 2005 letter that the claimant did not meet the criteria of the family concession policy because someone in the family had a criminal conviction. More serious was the failure to serve the December letters so that the first the family heard of the removal was when the immigration officers arrived in the early hours of the morning of 10 January 2006. That was coupled with the absence of a pastoral visit pursuant to the Secretary of State's policy. Importantly, as the Secretary of State has conceded, there was the omission to facilitate access to legal advice. That might well have led to a challenge to the removal on the basis, for example, of an absence of certification of any Article 8 claims which the family might have. There is no need for me to speculate on the strength of the case at that time. The reality is that it might well have been that access to legal advice would have delayed removal and taken the family over the seven-year threshold under the policy mentioned earlier. An application under that policy might have been successful.

27. Secondly, there is the Secretary of State's conduct in relation to this litigation. The Secretary of State is certainly entitled to take positions on legal advice and to robustly defend her position. But here there was the Secretary of State's delay in accepting that the December 2006 letters had not been sent before removal, a fact which had long been known. Crucially, there was the error of not conceding earlier the unlawfulness of the detention and removal. On behalf of this court I must accept a part of the blame for the delay in the litigation, for the reasons given earlier. That may have lead the Secretary of State not to address the issue earlier. The overall delay, as I have said, has accentuated the impact of the detention and removal on this family. In my view that tips the balance in favour of an order directed at the Secretary of State for their return.

28. What will occur as a result of that order is not for me. No doubt the family will wish to consider closely the opportunity of returning. In particular, they will need to bear in mind the comment of Dr Brand about the disruption which will be caused to the children. With that in mind, I intend to direct the order to the Secretary of State so that

it will not operate immediately but will allow the family some time to consider their position. Moreover, it is certainly not for me to determine how the Secretary of State will consider any application they make on return. No doubt she will examine the position with the most anxious scrutiny when deciding whether or not to pursue the various avenues set out in the recent statement of her senior official of the UK Border Agency.

Damages

29. There is also the issue of the damages payable to the family for the unlawful detention until their arrival in Germany. Both parties agree that the leading authority is Thompson v Commissioner of the Police of the Metropolis [1998] QB 498. In giving the judgment of the Court of Appeal, Lord Woolf set out principles for the award of the compensatory damages in the case of unlawful detention. These comprise both basic damages and aggravated damages. In a straightforward case, Lord Woolf said, the starting point was likely to be £500 for the first hour of the deprivation of liberty. Additional sums should be awarded for the following periods, but should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases. A claimant is entitled to a higher rate of compensation for the initial shock of detention. As a guideline, Lord Woolf proffered a tariff of £3,000 in relation to the first 24 hours: [515]. Taking into account the change in the value of money that is some £4,600 in today's prices.

30. Lord Woolf then addressed aggravated damages, again ordered as compensation. These should be payable, he held, where there were aggravating features of the case which would result in a claimant not receiving sufficient compensation for the injury suffered if the award was restricted to a basic award. Aggravating features mentioned by Lord Woolf include humiliating circumstances at the time of the detention, any conduct of those responsible for the detention which shows that they behaved in a high-handed, insulting or oppressive manner, or particular features associated with the way the litigation is conducted. Lord Woolf continued that where it was appropriate to award aggravated damages, the figure was unlikely to be less than £1,000, but the court would not expect such damages to be as much as twice the basic damages, except perhaps where, on the particular facts, the basic damages were modest: [516].

31. On behalf of the family, Mr Gill QC contends that the starting point in this case should be high and that the aggravating features were considerable. It was because the detention was especially traumatic given the hour and the manner in which it was conducted. That was doubly so for the mother with her mental health problems, and for the girls, since they were then aged 8 and 14 (the son was just over 18 years). Moreover, there was the manner in which the litigation was conducted, to use that peg identified by Lord Woolf in Thompson. There was, in Mr Manjit Gill QC's submission, an intentional denial of legal advice and a heavy violation of the claimant's civil and Convention rights. Not least was there, in his submission, the deliberate detention of the family's mobile telephones.

32. As I said earlier, the events surrounding removal on 10 January are disputed. I do not intend to enter that territory. Moreover, the figures mentioned by Mr Gill, QC -- the

sum of £15,000 for the father and son, and some £20,000 each for the mother and the two daughters -- do not, in my judgment, accord with the principles laid down by the Court of Appeal in Thompson. The primary remedy sought in this judicial review is the return of the family; that has been achieved. The factors bearing on the exercise of my discretion in making that order have a relevance in the award of damages and should be factored in. Doing the best I can, in my view the appropriate figure for basic and aggravated damages for both the father and the son is £4,500 (£2,500 basic damages), and for the mother and the two daughters, some £6,000 (£3,000 basic damages).

33. Finally, there is a claim for special damages. In a statement in 2008 the father identified a loss of property in the house at the time of removal, which was lost to the family. Subsequently, the first claimant itemised the property and attributed to it a value of some £10,000. For the Secretary of State, Mr Patel submits that there has never been a proper particularisation of this claim for special damages. In my view, the issue has been on the agenda for some time. The Secretary of State should have addressed it. I propose to order special damages of some £10,000 to cover that loss. In fairness to the Secretary of State, I propose that she be given 28 days in which to challenge either the total amount or any particular aspect of that head of special damages.

34. Thank you. Mr Gill, one thought I did have was that we should anonymise this.

35. MR GILL: Yes, they are still people who have an asylum claim and because there are children involved as well. I would be grateful for anonymity. My Lord, there are a couple of matters that I would invite the court to consider.

36. MR JUSTICE CRANSTON: Yes.

37. MR GILL: Firstly, your Lordship will note that not only was the claim for damages and for the false imprisonment common law, there were the human rights damages. It may be that nothing further need be said about those, save in relation to this point: your Lordship will recall that I raised the question of how is the subsequent period in Germany to be compensated? It is not a false imprisonment as such, the four and a half years that they have had away from their private life in this country. The life that they have had to live in Germany for four and a half years is radically different to that which they would have had in this country. It may be that it has been overlooked and I would invite your Lordship to consider giving a short additional judgment in relation to that for which some sum or other needs to be awarded.

38. MR JUSTICE CRANSTON: Certainly, that is a factor as I indicated in the judgment, I took into account in exercising my discretion to order return.

39. MR GILL: Indeed. Although the basic and the aggravated can deal with the detention itself, this matter is quite significant, especially when one compares is to the control order type scenarios, as I mentioned. I would invite your Lordship to give a short additional judgment on that point, just to ensure that everything was dealt with.

40. The only other point that I had was that, although the consent order in January indicated that all sides were prepared to proceed on the basis that for those proceedings and liability, that it was not necessary to decide the factual disputes, I would not want to be thought, and I put this on the record, that that was ever a concession which related to any damages issues. That having been said, the relevant matters in relation to damages I have attempted to put before you on the basis of the documents alone today -- bearing in mind there has been, for today's purposes, no request by the defendant that he wishes to defend the claim by reference to calling oral evidence -- but that was never intended to relate to the damages claim at all, it was just to get rid of that particular hearing on liability.

41. Lastly, your Lordship also mentioned in the early stage of the judgment that they had entered in 1999 using false identities. I am not entirely sure about that, but if I am right that they used their ordinary identities, may I have leave to send a note to the court just for those words to be corrected?

42. MR JUSTICE CRANSTON: I think I used the Secretary of State's acknowledgement of service in 2006, but please check it.

43. MR GILL: Maybe your Lordship would wish to deal with the first of those point that I raised first.

44. MR PATEL: My Lord, can I raise a number of matters?

45. MR JUSTICE CRANSTON: Yes.

46. MR PATEL: For the transcript, I think, my Lord, you said that in reference to the judgment (Inaudible) there being a decision you referred to the January 2008 and August of 2008; it should be 2009 for both of those dates.

47. MR JUSTICE CRANSTON: Sorry, what was that for?

48. MR PATEL: When your Lordship gave background to the matter.

49. MR JUSTICE CRANSTON: Yes.

50. MR PATEL: You talked about the judicial review happening in June 2008 and the hearing happened in 2008 and then the judge became ill, such that there wasn't a decision until, I think you then said, January 2008.

51. MR JUSTICE CRANSTON: That was not the case.

52. MR PATEL: I think you meant 2009.

53. MR JUSTICE CRANSTON: Yes.

54. MR PATEL: Then subsequently, you talked about when the judgment was handed down, you said 21 August 2008, again, it should be 2009.

55. MR JUSTICE CRANSTON: Yes.

56. MR PATEL: I wonder whether your Lordship would just indicate just to confirm, but when it comes to the damages you have awarded for unlawful detention, are those figures £4,500 each for the father and the son?

57. MR JUSTICE CRANSTON: Yes.

58. MR PATEL: Yes, okay. My Lord, again, I don't know whether your Lordship is able to indicate, but are you able to indicate for what periods of detention your Lordship is making that award? Because there was a dispute between the two of us as to what the proper referable detention period should be.

59. MR JUSTICE CRANSTON: I took the view, as I said in argument, that you are not responsible for what the German authorities did.

60. MR PATEL: I am grateful for that indication.

61. MR JUSTICE CRANSTON: I shall make that clear in the transcript.

62. On the other point, Mr Gill, I would prefer to think about it, to make any further change if needs be.

63. MR GILL: My Lord, certainly. On the point that Mr Patel has just raised, whilst the Secretary of State may not in one sense be responsible for what the German authorities did, as I indicated before, I invited the court to take into account that it was absolutely foreseeable that they would, in fact, be detaining the family and therefore it must have been a foreseeable consequence of the detention.

64. MR PATEL: My Lord, I don't want to prolong --

65. MR JUSTICE CRANSTON: I have made my view clear.

66. MR PATEL: Your Lordship's already made his decision.

67. MR JUSTICE CRANSTON: I have made my view clear.

68. MR PATEL: Thank you.

69. MR JUSTICE CRANSTON: Okay.

70. MR GILL: My Lord, as regards drawing up an order in due course.

71. MR JUSTICE CRANSTON: Could you please do that?

72. MR GILL: Certainly, there are questions of interest and so on we can deal with amongst ourselves. **(Pause)**.

73. MR JUSTICE CRANSTON: I said Mr Gill that I would want to give the family some time to consider the issue. They have to take legal advice and all the rest of it. Could you discuss how that could be done with Mr Patel?

74. MR GILL: Yes.

75. MR PATEL: My Lord, I am grateful. There are two other points that I wish to raise in terms of consequential orders. The first is in relation to the time that you are prepared to give the Secretary of State to effect removal. In effect, that's what the family want.

76. MR JUSTICE CRANSTON: How much do you want?

77. MR PATEL: We would ask for a period of 28 days and the reason why we would ask for that is because there are a number of matters which need to be dealt with.

78. MR GILL: I would be content with 28 days. I think it is probably going to take some days to sort these things out.

79. MR JUSTICE CRANSTON: Yes.

80. MR PATEL: The second matter, my Lord, is in light of your Lordship's clarification of the awards and the time I seek permission to appeal on that issue in relation to your Lordship's award. I say that, with all respect to your Lordship, it is very difficult to make an application direct to the judge.

81. MR JUSTICE CRANSTON: Yes, of course, it happens all the time, Mr Patel, so do not be embarrassed. As I usually say, I think you'll have to go elsewhere.

82. MR PATEL: In which case, could I ask for an order that any extension for the time for permission is extended to 14 days after the transcript is available? Thank you, my Lord.

83. MR GILL: That is of course the damages, he is not seeking any appeals on the return?

84. MR JUSTICE CRANSTON: No, no, I don't think so.

85. MR GILL: This will help us to sort out the order, costs to be paid by the Secretary of State, of course.

86. MR JUSTICE CRANSTON: Anything more?

87. MR PATEL: No, my Lord.

88. MR JUSTICE CRANSTON: Well thank you very much indeed. Thanks to all of you for your help.