Neutral Citation Number: [2010] EWCA Civ 1478

Case No: T2/2010/0171

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
Mr Justice Mitting, Judge A Jordan, Mr M James
Special Immigration Appeals Commission

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2010

Before :

LORD JUSTICE SEDLEY
LORD JUSTICE MOORE-BICK
and
LORD JUSTICE SULLIVAN

- -

Between :

QJ (ALGERIA)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Raza Husain QC, Basharat Ali and Zia Nasim (instructed by Aman Solicitors Advocates) for the Appellant
Jonathan Moffett and Carys Owen (instructed by **The Treasury Solicitor**) for the Respondent
Michael Birnbaum QC and Abid Mahmood (instructed by the **Special Advocates Support Office**) as Special Advocates

Hearing dates : Wednesday, 1st December 2010

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Approved Judgment

Lord Justice Sullivan :

Introduction

1. This is an appeal against the decision dated 14th December 2009 of the Special Immigration Appeals Commission (Mitting J., Senior Immigration Judge Jordan and Mr James) ("SIAC") dismissing the Appellant's appeal against the Respondent's decision dated 15th May 2009 under section 32(5) of the UK Borders Act 2007 ("the 2007 Act") to make a deportation order in respect of the Appellant.

Factual Background

2. The factual background is set out in some detail in paragraphs 1 – 6 of SIAC's open judgment.

> "1. The Appellant is a 44 year-old Algerian national who has been in the United Kingdom for at least ten years. The circumstances of his arrival are obscure. He now claims to have left Algeria in 1991 and to have arrived in the United Kingdom at the end of 1997. He says that between 1991 and 1997 he spent time successively in Italy, France, Germany and Holland. He says that he married his Algerian-born wife, then living in Algeria, by proxy in 1998. He undoubtedly claimed asylum on 4 March 1999. His wife came to the United Kingdom in March 2000, via a roundabout route. There are two sons of the marriage, I and A, aged eight and seven. Neither has known any country other than the United Kingdom. I was born with a blocked or absent oesophagus and an enlarged lower lobe of the left lung. Reconstructive surgery was required to create a passage from the pharynx to the stomach. Unsurprisingly, he has suffered a variety of conditions, including difficulty in feeding, recurrent chest problems and bleed from the gut for which he has received expert treatment at Leicester Royal Infirmary. A colon transplant may well be recommended within the next six months.
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> 2. QJ's claim to asylum was refused on 1 March 2002. He appealed against that refusal, but his appeal was overtaken by events and automatically lapsed on the decision of the Immigration and Nationality Directorate on 19 August 2003 to withdraw its decision to refuse the claim. On 6 October 2003, his wife claimed asylum, with her two sons as dependent upon her claim. That was refused on 17 June 2008. On 22 October 2008 her appeal was allowed on limited grounds by Immigration Judge Plimmer and she was granted leave to remain for a period which has recently expired. It is her, and QJ's declared intention that, whatever should happen to him, she and their sons should, if possible, remain in the United Kingdom. It is the

UKBA's intention, if QJ's appeal fails, to remove the family, as a whole, to Algeria.

3. The events which overtook QJ's asylum claim were the result of his criminal activities, undertaken in the United Kingdom, between 1 September 2000 and 26 September 2001: (1) conspiracy to defraud financial institutions by the manufacture and use of counterfeit bank, credit and charge cards and the unauthorised use of the details of card account holders; (2) entering into a funding arrangement for the purposes of terrorism. On 25th September 2001, he was detained under the Terrorism Act 2000 and later charged with offences under that Act. He was sent for trial on 17 January 2002 and was tried by Curtis J and a jury at Leicester Crown Court between 22 January and 1 April 2003. He was indicted on four counts: conspiracy to defraud, entering into a funding arrangement for the purposes of terrorism, membership of a proscribed organisation (Al Qaeda) and having a false instrument (a passport) with intent. He pleaded guilty to the last offence and, no evidence having been offered, was acquitted of the third. He was convicted of the first two and sentenced to a total of eleven years' imprisonment. He appealed, unsuccessfully, to the Court of Appeal on the single ground that adverse publicity before and during his trial had made a fair trial impossible. The case against QJ and his co-accused was that they had provided substantial sums of money, false documents and non-military equipment, to Jihadists, raised by a sophisticated and successful card-cloning fraud. Curtis J concluded that severe sentences, with a strong element of deterrence, were required and recommended that both should be deported.

4. On 16 March 2005 QJ was convicted, in absentia, by an Algerian court of an offence under Article 87(a)(6) of the Algerian Criminal Code – membership of or involvement in a terrorist group operating abroad – and sentenced to twenty years' imprisonment. The identity of the group and the nature of the evidence supporting the conviction are unknown.

5. The earliest date upon which QJ could have been released was 18 July 2007 and the latest 18 May 2009. He was not discharged from prison, and then only into immigration detention, until the latter date. In every formal assessment made of him while in prison, he maintained that he was not guilty of the offences of which he was convicted. All OASYS assessments have produced a low-risk score.

6. From September 2006 onwards, QJ's then solicitors pressed for a decision upon his outstanding asylum claim. He was interviewed on 26 February and 24 March 2009 and a SEF completed. On 12 May 2009, UKBA gave notice of the Secretary of State's decisions:

   i) To certify the asylum claim under section 72(2) and (4) of the Nationality Immigration and Asylum Act 2002 and, so, to apply the presumption that, for the purposes of Article 33(2) of the Geneva Convention, he had been convicted of a particularly serious crime and constituted a danger to the community of the United Kingdom.

   ii) To refuse his claim to asylum on the grounds that he did not have a well-founded fear of persecution in Algeria.

   iii) To refuse him humanitarian protection under paragraph 339(C) of the Immigration Rules.

   iv) To reject the claim that the right to respect for family and private life of QJ and his family under Article 8 ECHR would be breached if he were to be deported to Algeria.

   v) Accordingly, to make a deportation order against QJ under section 32(5) of the UK Borders Act 2007.

   The Secretary of State certified under section 97(3) of the 2002 Act that the decision had been taken wholly or partly in reliance on information which should not be made public in the interests of the relationship between the United Kingdom and Algeria, so that any appeal by QJ lay to SIAC granted bail, in principle, on stringent terms, including a 20-hour curfew and a geographical boundary during non-curfew hours. He has recently been released to an address in Coventry, where he resides with his family."

The Grounds of Appeal

3. Although the Grounds of Appeal raised numerous issues under Articles 3, 5, 6 and 8 of the European Convention on Human Rights ("ECHR") and the Refugee Convention, Mr Husain QC wisely confined his submissions to two grounds only: Article 8 and Double Jeopardy. While he reserved his position on the other grounds, he recognised, in my view correctly, that on the authorities as they presently stand this Court would be bound to reject them. I will deal with the Article 8 and Double Jeopardy grounds in turn.

Article 8

4. The Appellant's criticisms of SIAC's decision under this head make it necessary to set out SIAC's reasoning in respect of Article 8 in full. In paragraphs 8 – 11 SIAC said:

> "8. QJ, his wife and sons undoubtedly enjoy a family and private life in the United Kingdom. This is so, despite the fact that, for almost all of the last eight years he has been in prison. Apart from the time when he was in HMP Frankland, which was inaccessible to them, his wife and sons have visited him regularly. There is no reason to doubt that they are a strong family unit. The adults have close ties to Algeria – of blood, upbringing and citizenship. Miss Plimmer has already decided, for wholly convincing reasons, that QJ's wife would personally, be at no risk on return to Algeria and has no viable claim to asylum in the United Kingdom. If the only members of the family were QJ and his wife, and the deportation of QJ could lawfully be effected, there would be no bar to the removal of them both; and such removal would not interfere with the exercise of the rights of either of them to respect for their private and family life. The answer to the first of Lord Bingham's questions in *R v SSHD ex p. Razgar* [2004] UKHL 27 paragraph 17 would be negative. But the family does not consist only of the two adults. The two sons have ties of blood to Algeria and of relationship to the one surviving grandparent (QJ's mother) and numerous uncles and cousins, but none of upbringing, which has occurred solely in the United Kingdom. There can be no doubt that removal to Algeria would be, for them, a major and disruptive event in their life. Further, I has a pressing need to remain, in the short term, in the United Kingdom if, as Mr Hoskyns, his treating consultant paediatrician anticipates, a colon transplant is recommended within the next six months. Even if such a procedure were available in Algeria, it seems inconceivable that QJ and/or his wider family in Algeria, could afford to pay for it, as he would certainly have to do if the procedure were to be performed in Algeria. Removal of the family to Algeria would, in our view, interfere with the exercise of the family's right to respect for its private and family rights in respect of the two sons, and in particular of I. The answer to Lord Bingham's second and third questions is that, in the case of the two sons, removal would have consequences of such gravity as potentially to engage the operation of Article 8, but that it would be in accordance with the law: no member of this family has an indefinite right to remain in the United Kingdom. Subject to the

questions considered below, QJ's removal is both lawful and required by section 32 of the UK Borders Act 2007 and, now that their leave to remain has expired, his wife and children have no right to remain and are liable to administrative removal.

9. The circumstances of this case require that questions four and five be answered together. There are, in principle, three possible factual outcomes:

   i) (as UKBA intend, and Mr Moffett contends) the whole family will be removed together;

   ii) QJ will be deported on his own, but his wife and two sons will follow, either voluntarily, or under compulsion, when and if I has his operation and is medically stable;

   iii) QJ is removed and his wife and sons remain permanently in the United Kingdom.

   (i) is possible, but not certain. It is far from inconceivable that UKBA will make the compassionate decision to allow QJ's wife and two sons to remain in the United Kingdom until I's operation has been successfully performed; or, if it did not, that the removal of the wife and children would be subject to challenge before the Tribunal or the Administrative Court. (ii) is, therefore, a realistic possibility, unless QJ's litigation (whether domestic or in Strasbourg if this appeal fails) is not finally determined until after I's operation has been performed. Of the three possibilities, (iii) is the least likely, because of the precarious nature of the long-term claims of this family to remain in the United Kingdom; but, because it cannot be entirely excluded, it must at least be considered.

10. Three of the interests identified in Article 8(2) are relied on to justify interference in the exercise of the Article 8 rights of this family: national security, public safety and the prevention of crime. They are, individually and cumulatively interests of the highest importance. The deportation of QJ is both intended and effective to further them and is no more than is reasonably required to do so. While claiming the protection of the United Kingdom from a claimed fear of persecution for a Geneva Convention reason in Algeria, QJ undertook large scale and successful efforts to facilitate Jihadist terrorism. With or without the statutory presumption in section 32(2) of the 2007 Act, that fact alone justifies the decision to deport him. Such activities pose a threat, direct or

indirect, dependent on their target, to the national security of the United Kingdom and the safety of its inhabitants. Further, deportation is a legitimate deterrent to those who are not British citizens to the commission of such crimes. The recommendation for deportation made by Curtis J was part of the sentence imposed by him. By undertaking the activities of which he was convicted, QJ knowingly put at risk the opportunity, at the time short-lived and tenuous, of enjoying family life with his wife and (then only) son I in the United Kingdom. He can have no legitimate complaint at the disruption, long-or short-term of his family life with them, by his deportation. The position of his wife and children, in particular of his children, commands more sympathy; but their predicament is, in principle, very similar to that of the family of a man separated from them, by the imposition of a long or indefinite term of imprisonment. The near-total disruption of family life produced by such a sentence is justified, under Article 8(2), in the interests of the prevention of crime. Accordingly, even in the unlikely event that the deportation of QJ results in his physical separation from his wife and two children for the long term, or even permanently, it is lawful and justified.

11. Lord Bingham's observations in paragraph 20 of *Huang v SSHD* [2007] UKHL 11, on which Mr Gill relies, are not in point.

> "In an Article 8 case where this question (proportionality) is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8. If the answer to this question is affirmative, refusal is unlawful and the authority must so decide."

Those observations apply only to the question to which they were directed: "the refusal of leave to enter or remain". They do not address, let alone determine, cases in which the deportation of an individual with no right to remain in the United Kingdom, is under consideration for the protection of one or more of the interests identified in Article 8(2), any more than they would the imposition of

> a lengthy sentence on an individual convicted of a serious crime."

5. Mr Husain submitted that this reasoning disclosed three errors of principle. SIAC had erred in:
   (1) holding that Huang applied only to leave to enter/remain cases and not to the deportation of those with no right to remain;
   (2) failing to regard the children's interests as a primary consideration; and
   (3) holding that the Appellant's family had no right to remain.

6. I would accept, as did Mr Moffett on behalf of the Respondent, that the wording of paragraph 11 of SIAC's decision is unfortunate, but does it amount to a material error of law (section 7(1) of the Special Immigration Appeals Commission Act 1997)? The point being made by Lord Bingham in paragraph 20 of Huang was that the test for the purposes of Article 8.2 was proportionality, not exceptionality. There is nothing in SIAC's reasoning in paragraphs 8 – 10 of its decision to suggest that it applied an exceptionality test, or any test other than proportionality.

7. SIAC addressed the Article 8 appeal by asking itself, and answering , the five questions posed by Lord Bingham in paragraph 17 of R (Razgar) v Secretary of State for the Home Department [2004] UKHL 27, [2004] 2 AC 368. The concluding question is: whether the interference with family life is "proportionate to the legitimate public end sought to be achieved?" In answering that question there is no indication that SIAC was led astray by the (misunderstood prior to Huang) observation of Lord Bingham in the final sentence of paragraph 20 of Razgar that

> "Decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable on a case by case basis."

8. SIAC answered the fifth question on a "worst case" basis: that the Appellant would be removed to Algeria, while his wife and sons would remain permanently in the UK, even though it thought that this outcome was unlikely. It concluded that even that degree of permanent disruption to family life was justified by the public interest in deporting from the UK a foreign criminal (section 32(1) of the 2007 Act) who had undertaken "large scale and successful efforts to facilitate Jihadist terrorism", activities which posed a "threat, direct or indirect….to the national security of the UK and the safety of its inhabitants".

9. Paragraph 11 of SIAC's decision should not be read in isolation. If it is read in the context of the preceding analysis by SIAC of the Article 8 issue, SIAC was intending to do no more than to point out an important distinction between deportation cases and refusal of leave to enter or remain cases: in the former type of case, "taking full account of all considerations weighing in favour of the refusal" may well justify a much greater degree of interference with family life than would be proportionate in the latter type of case.

10. Turning to the second error of principle, Mr Husain did not submit that SIAC should have approached the Article 8 appeal on the basis that the interests of the children, I

and A, were an overriding consideration, or the primary consideration. He submitted that the interests of I and A should have been treated as a primary consideration. He relied on the statement of Blake J. in paragraph 28 of LD Zimbabwe [2010] UKUT 278 (IAC) that "….the interests of the child should be a primary consideration in immigration cases. A failure to treat them as such will violate Article 8(2)…."; and on the Guidance issued pursuant to 55 of the Borders Citizenship and Immigration Act 2009 which says that:

> "In accordance with the UN Convention on the Rights of the Child the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children."

11. Provided the difference between the interests of the child being a primary consideration and those interests being the primary consideration is clearly understood, and it is recognised that the weight to be attributed to the various primary considerations, which in deportation cases will include the public interest in deporting foreign criminals (see section 32(4) of the 2007 Act), is a matter for the Tribunal to determine on the facts of any particular case, I am content to proceed on the basis that SIAC should have regarded the interests of I and A as a primary consideration.

12. The question is not whether SIAC used that particular form of words, but whether it did in fact treat I and A's interests as a primary consideration. In my judgment there can be no doubt that it did so. In paragraph 1 it set out the childrens' ages, made the point that neither had known any country other than the UK, and described I's serious medical condition. In paragraph 8, having made the point that if the family comprised simply the Appellant and his wife there would be no interference with family or private life, since both could be removed together to Algeria, SIAC said that the family did not consist only of the two adults. Thereafter SIAC's consideration of the Article 8 appeal focussed upon the impact on the children of either the removal of the family to Algeria (paras. 8 and 9), or the removal of the Appellant to Algeria, leaving the children with their mother in the UK (para.10). If SIAC's consideration of the Article 8 appeal is read as a whole, there can be no doubt that the interests of I and A were regarded as a primary consideration, but unsurprisingly, given the seriousness of the Appellant's criminal conviction, they were not given overriding weight.

13. Turning to the third error of principle. In paragraph 2 of its decision SIAC noted that the appeal of the Appellant's wife (with I and A as her dependents) had been allowed on limited grounds by Immigration Judge Plimmer and that the Appellant's wife had been granted leave to remain for a period (until 6th November 2009) which had recently expired. Immigration Judge Plimmer had rejected the Appellant's wife's appeal on asylum and Article 3 grounds, but had held that it would be a disproportionate interference with the Appellant's wife's and sons' Article 8 rights to removed them when the future status of the Appellant remained undetermined, but was likely to be determined soon.

14. Mr Husain submitted that SIAC had erred in saying in paragraph 8 that "now that their leave to remain has expired [the Appellant's] wife and children have no right to remain and are liable to administrative removal" because the Appellant's wife had applied, in time, for an extension of their leave to remain, and she and the children

therefore continued to have leave to remain under section 3C of the Immigration Act 1971.

15. SIAC can be forgiven for not realising that this was the formal position. It does not appear that evidence of the Appellant's wife's application for an extension of leave was placed before SIAC. The Appellant's witness statement merely said that his family had "leave to remain in the UK", but it was dated 6th November 2009, the last day of their limited leave. The Appellant did not give oral evidence, and his wife's witness statement referred only to her limited leave.

16. In any event, the "error" is of no consequence for two reasons, firstly because in paragraph 9 of its decision SIAC correctly described the Appellant's family's claims to remain in the UK for the long term as "precarious". They did not have a grant of leave for any particular period, their leave was merely continued until such time as their application for an extension was determined, either by the Respondent or on appeal by the First-tier Tribunal (Immigration and Asylum Chamber). Secondly, the precarious nature of the Appellant's family's right to remain in the UK was relevant only for the purpose of deciding whether deporting the Appellant would result in his long-term or permanent separation from the family, because the Appellant's wife and children would remain in the UK. Even though SIAC considered that this outcome was unlikely (in part because their long-term right to remain in the UK was precarious), it nevertheless considered the issue of proportionality under Article 8.2 on this "worst case" basis (see above).

Double Jeopardy

17. SIAC dealt with this issue in paragraphs 28 – 37 of its decision. For present purposes, it is sufficient to note that SIAC accepted that there was a real risk that the Appellant

> "….would be prosecuted for and convicted of an offence under Article 87(a)(6) which was, at least in part, founded on allegations and facts which had been the subject of his conviction and acquittal at his trial in Leicester. It is, therefore, necessary to consider whether that risk amounts to a real risk of a flagrantly unfair trial, such as would put the United Kingdom in breach of Article 6 if QJ were to be deported to Algeria." (para.30)

18. SIAC also accepted that:-
(a) The Double-jeopardy rule would effectively prevent any further prosecution of the Appellant in England and Wales for an offence arising out of his activities here between 1st September 2000 and 26th September 2001. (para.32)
(b) An extradition request by Algeria for an offence under Article 87(a)(6)

> "….would be refused for one or both of two reasons: if the allegation was of membership of Al Qaeda, it would be prohibited under Article 4(1); if it was founded on the same or substantially the same facts as those which gave rise to his conviction at Leicester Crown Court, it would be refused under Article 4(2)(d)." (para.34)

19. It was submitted by Mr Gill QC (who appeared on behalf of the Appellant before SIAC) that because the Appellant could not be retried in the UK or extradited to Algeria, it would be unlawful under (a) domestic law and/or (b) the ECHR to deport him to Algeria without a reliable assurance from the relevant authorities in Algeria that he would not be prosecuted for an offence under Article 87(a)(6) which arose out of the same or substantially the same facts as those which gave rise to his conviction and acquittal at Leicester Crown Court. (para.35)

20. SIAC rejected that submission. It held that, as a matter of domestic law, the Appellant was being deported as a "foreign criminal" under section 32 of the 2007 Act, and while section 33 contained a number of exceptions to the Respondent's duty to deport under section 32(5), those exceptions did not include breach of the double jeopardy rule (para.36). SIAC said that exposure to double jeopardy was not, in terms, prohibited by Article 6, or any other Article of the ECHR as originally signed. It set out the terms of Article 4 of the Seventh Protocol done at Strasbourg on 22nd November 1984, but said that it was not applicable to the present case for two reasons: (a) the UK had not ratified it, and (b) it applied only to acquittals and convictions "under the jurisdiction of the same state", not to proceedings in different signatory states, "let alone to proceedings in one signatory state and in another state which is not a signatory". (para.36)

21. Notwithstanding Mr Husain's valiant attempts to persuade us to the contrary, I have no doubt that SIAC was right to reject the submission made on behalf of the Appellant for the reasons it gave in paragraphs 35-37 of its decision. Mr Husain accepts that the decision to deport the Appellant is a bona fide deportation decision under the 2007 Act, and is not a disguised form of extradition. Under UK domestic law the very detailed statutory regimes governing deportation and extradition, while they may well have similar consequences from the deportee/extraditee's point of view, are wholly separate, and they serve different purposes. The Respondent must make a deportation order in respect of foreign criminals because Parliament has decided that it is in the public interest that such persons should be removed from the UK. Whether the individual may, or will be tried for an alleged criminal offence on return is irrelevant for the purposes of this statutory function, save only to the extent that such a trial might breach the individual's rights under the ECHR. In those extradition cases where the individual is alleged to have committed an offence, a foreign government will be seeking the removal of that individual to the foreign country for the purpose of putting him on trial for that offence. It is unsurprising that, in those circumstances the statutory bars to extradition in section 11 of the Extradition Act 2003 are concerned with the appropriateness of the individual being tried for that particular offence in the foreign country.

22. Mr Husain invoked the common-law rule against double jeopardy, but the statutory scheme in the 2007 Act is both detailed and highly prescriptive. There is no basis for the addition, by implication, of a further exception to those set out in section 33. Nor does the right to appeal against a deportation decision under sections 82(3A) and 84(1)(e) on the ground that the decision "is otherwise not in accordance with the law" assist the Appellant. The law in accordance with which a decision to deport a foreign criminal must be made is that which is set out in the 2007 Act, and that law does not contain a double jeopardy exception.

23. What is the position under the ECHR? If the rule against double jeopardy was inherent in Article 6 there would have been no problem in raising it as a ground of appeal before SIAC: the first exception in section 33(1) of the 2007 Act is where removal would breach the foreign criminals' rights under the ECHR; and one of the grounds of appeal under section 84(1) is that the decision (to deport) is incompatible with the deportee's rights under the ECHR.

24. However, Mr Husain fairly conceded that there is, at present no clear and consistent jurisprudence to suggest that the rule against double jeopardy is viewed as inherent in Article 6. Indeed, he accepted, as Mr Moffett had submitted in the Respondent's Skeleton Argument, that the jurisprudence was to the contrary effect. It is, therefore, unnecessary to refer to the authorities relied upon by Mr Moffett for that proposition. If it is accepted that the prospect of double jeopardy by reason of proceedings in another state does not, of itself, give rise to a prospective breach of Article 6, how can it be said that the Appellant's deportation to Algeria would breach his rights under the ECHR?

25. Mr Husain submitted that, even though removal would not be in breach of Article 6, the fact that there was a risk that the Appellant would be exposed to double jeopardy was a factor which was relevant for the purpose of the proportionality balance under Article 8.2, because it increased the gravity of the interference with the Appellant's right to respect for his private life. Prosecution, conviction and imprisonment were capable of contributing to an interference with the right to respect for private life.

26. SIAC did not deal with this point because no submission to this effect was made at the hearing before the Commission, indeed the private life limb of Article 8.1 was not relied upon: the emphasis was upon the disruption of family life. Had such a submission been made, it would have been necessary for SIAC, as a first step, to engage in the fact-finding exercise of identifying the nature, and extent, of the interference relied upon. It is not suggested that the prospect of double jeopardy increases the disruption of the Appellant's family life, SIAC having considered the impact on family life on a "worst case" basis (see above). Nor would there be any increase in the disruption of the Appellant's private life (such as it is given his lengthy period of imprisonment and the stringent conditions of his bail, see para.6 of SIAC's decision) in the UK.

27. On the Appellant's own case, he left Algeria some twenty years ago. There was no evidence that he had any private life there, and whether or not he has to face a trial on return, he will have to re-establish a private life in Algeria. In these circumstances, it is difficult to see how the prospect of facing an Article 6 compliant trial could amount to a significant interference with the Appellant's right to respect for his private life. The real risk that the trial in Algeria, while Article 6 compliant, would place the Appellant in double jeopardy, does not substantially alter this assessment, much less is it capable of leading to the conclusion that there would be a "flagrant breach" of the Appellant's right to respect for his private and family life under Article 8.1: see paras.133 and 134 of the speech of Lord Phillips in RB (Algeria) v Secretary of State for the Home Department [2009] UKHL 10, [2009] 2 WLR 512.

28. I agree with Mr Moffett's submission that, bearing in mind SIAC's approach to the balancing exercise under Article 8.2, this point is academic in any event. While SIAC

felt that the position of the Appellant's wife and children commanded more sympathy, it also concluded that, by reason of his criminal conduct the Appellant himself could "have no legitimate complaint at the disruption, long or short-term of his family life with them". There is no realistic prospect that the fact, if it be a fact, that in addition to the impact of deportation, the risk of double jeopardy in an Article 6 compliant trial in Algeria would also result in some increased interference with the Appellant's right to respect for his private life in Algeria, would have altered SIAC's conclusion that the Appellant's removal from the UK was justified under Article 8.2.

Conclusion

29. For these reasons I would dismiss this appeal.

Lord Justice Moore-Bick

30. I agree.

Lord Justice Sedley

31. I also agree.