

Thursday, 4th October 2012

BEFORE:

MR JUSTICE MITTING
UPPER TRIBUNAL JUDGE JORDAN
SIR STEWART ELDON, KCMG OBE

THE ALGERIAN CASES

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MS S HARRISON (instructed by BPP, Luqmani Thompson and Fountain Solicitors)
appeared on behalf of the Appellants W, PP and U.

MS W KILROY (instructed by BPP) appeared on behalf of Y and G .

MS A WESTON (instructed by Luqmani) appeared on behalf of BB.

MR R TAM QC (instructed by the Treasury Solicitors) appeared on behalf of the
Respondent.

MS J FARBEY QC and MR GOUDIE (instructed by the Special Advocates' Support Office)
appeared as Special Advocates.

DECISION (BAIL)

Transcribed by Harry Counsell
Court Reporters
Cliffords Inn,
Fetter Lane,
London EC4A 3LD
Tel: 020 7269 0370

MR JUSTICE MITTING:

1. These appellants have been on bail for varying lengths of time; in the main their record of compliance with bail conditions has been at least good and in some instances impeccable. The time has arrived, given that this litigation, domestic and European, has not yet ended and is not going to for some time, except conceivably if it ends in their favour, to modify substantially the restrictive bail terms on which they have been on bail.

2. In all of the cases except U, we are going to move to an overnight curfew regime only. Each appellant will be required to be at their home for eight hours continuous at night, but will otherwise be at liberty to be out of their home at any time. They will have, as now, to report in on the first occasion when they leave and on the last occasion on which they return, but not otherwise. If we have understood their domestic requirements correctly, the hours should be as follows: in the case of PP, the curfew will be from 12 midnight until 8 am; likewise in the case of W; likewise in the case of Y; in the case of BB, because of his need to see his children off early in the morning, the curfew will be from 10.30 pm to 6.30 am; and in the case of G, because of his children's requirements, the curfew will be from 11 pm to 7 am.

3. We decline to substitute for the existing boundaries exclusion areas. We are sympathetic to the proposition that existing boundaries are too narrow and do need to be enlarged, but we cannot do that on the hoof today, because no proposed boundary maps have been produced and the Secretary of State and her security advisors have not had the opportunity of considering specific geographic areas. Consequently, we propose to deal with that by leaving existing boundaries in place, but inviting each

appellant to submit proposals for an extended boundary giving the Secretary of State an adequate opportunity to respond, including to respond with closed submissions, if she sees fit; whereupon I, as President, and not we, as a panel, will determine where the boundary should be.

4. On the vexed question of visitors and encounters outside the house, we have come to the conclusion that the current arrangement of restricting visitors without prior clearance imposes unnecessary and, in the light of the history of good compliance over the years, unreasonable, restrictions upon the rights of appellants, but more particularly, where they have them, of their spouses and children, to enjoy ordinary family life. We propose, therefore, that all restrictions on meetings and visits should be lifted and instead there should be substituted a regime under which the Secretary of State first produces and serves a list of those whom the appellants may not contact, either in their homes or outside their homes. That list can be very extensive and can include people with whom there is no reason to believe any individual appellant would ever contact. The reason is simplicity and comprehensiveness. That will take a little time to put in place, but, once in place, we propose to lift the visitor restrictions and restrictions on meetings outside the house. The Secretary of State will, in addition, have the right at any time, and without prior approval by SIAC, to add to the list. Of course, if there are objections to the additions, they can be resolved, but they will be resolved after addition not before. We agree that no visitor should be allowed to visit the homes of the appellants except during non-curfew hours.
5. In some cases, there are requests relating to computers. We deal with them specifically.
6. As far as PP is concerned, he may have in his home a computer with wired internet

access only. That will be subject to conditions, which the Secretary of State will set out and SIAC will impose. His stepson may bring his own computer into the house, but it must be switched off while it is in the house. Consequently, if his stepson wishes to work on a computer, it will have to be on the computer installed with wired internet access and he will have to transfer any files to it.

7. As far as W is concerned, computer access would be pointless for him, because he cannot operate one. If ever he should undertake an educational course, which teaches him how to use a computer and then requires him to do so, I or we will re-consider when the occasion arises.
8. As far as BB is concerned, we will give permission for a computer to be installed at his house with wired only internet access, connected to the school server, for the exclusive use of his children. Again, conditions need to be drawn up by the Secretary of State to monitor that. We do not give permission for BB, himself, to have the use of a computer for reasons that go back to our open findings in the national security case against him when we rejected his appeal.
9. As far as G is concerned, the current restrictions on the use of the computer in his home will remain.
10. As far as Y is concerned, he may have a computer with wired access only, again on conditions to be settled by the Secretary of State. He requests, in addition, access to mosques within his existing and, if it is extended, his extended boundary. He is to provide a list of the mosques within the boundary that he might wish to frequent. The Secretary of State will then have an opportunity of making representations about whether he should be allowed to visit an individual mosque or not. His proposals for

a boundary extension include the possibility of making regular unaccompanied visits to museums. He should set out those proposals in detail. We are sympathetic to proposals that involve regular visits to museums and cultural facilities identified near his home; more distant visits may be problematic.

11. As far as G is concerned, a request for what amount to long-distance trips for the sake of his children are unlikely to be granted as a blanket exemption and the likelihood is that they will have to be dealt with on a case-by-case basis and permission granted for each visit.

I think that that deals with all of the matters that you have asked us to deal with.

MS WESTON: I just have one question arising. Does BB's wife have permission to use the computer?

MR JUSTICE MITTING: Yes, I can see no reason why she should not. Yes.

MS HARRISON: There is just one consequence of the conditions for W's son which is, in order to be able to transfer his files from his laptop to the hard drive of the other computer, he needs to be able to have a USB stick. At the moment that is prohibited from being brought into the house as well. If he can have a laptop, can he also have that device which will have his documents on, and he will be able to transfer from one to the other?

MR JUSTICE MITTING: I am told from my left by someone who knows a great deal more about that than me that that is something that needs to be considered before it is determined upon, because there are possibilities for misuse that need to be taken into account.

MS HARRISON: Perhaps that is something that we can take up later.

MR JUSTICE MITTING: Yes. As far as U's attendance at the college is concerned, next Monday, he has permission to do that. The hours that I extended until today remain in place until the end of this month or alteration, whichever the earlier.

MS HARRISON: There was just one thing in terms of the Secretary of State supplying the list. Could we have a cut-off time for that, say 14 days or seven days?

MR TAM: Fourteen days, please, for that.

MR JUSTICE MITTING: Yes.

MR TAM: Sir, we have one request, which is that the variations of ... I think that it is the curfew times are a problem, they should take effect from - can I say off the top of my head? - 1am on Saturday. It does take a little time to get all the monitoring people up to speed.

MR JUSTICE MITTING: Quite. Furthermore, the bail orders are going to have to be drawn up and signed. That actually is quite a tight timetable for that.

MR TAM: We would be happy to work to whichever timetable suits you. We do not think that we can do it faster than that.

MR JUSTICE MITTING: Given that the bail orders have got to be drawn up, and I may look to your side to assist in that, you have the existing orders ... Just give me a moment.

For particular reasons within the office, this can only be done rapidly if the Secretary of State does the drafting. I think that it would be unwise to work to a timetable that sets everything in train before Monday at midnight.

MR TAM: Yes. Do you mean midnight of Sunday/Monday?

MR JUSTICE MITTING: No, I mean midnight of Monday/Tuesday.

MR TAM: If it is midnight Monday/Tuesday, would you say 1am on Tuesday?

MR JUSTICE MITTING: Yes.

MR TAM: The reason being that these curfews start at midnight or the new curfew will start at midnight, so, if you say 1am on Tuesday ...

MR JUSTICE MITTING: Yes.
