Trinity Term
[2021] UKSC 30
On appeal from: [2017] EWCA Civ 1284

JUDGMENT

Sanambar (Appellant) *v* Secretary of State for the Home Department (Respondent)

before

Lord Reed, President
Lord Hodge, Deputy President
Lord Sales
Lord Stephens
Sir Declan Morgan

JUDGMENT GIVEN ON

16 July 2021

Heard on 4 March 2021

Appellant	*Respondent*
Raza Husain QC David Chirico Eleanor Mitchell (Instructed by Elder Rahimi Solicitors (London))	Sir James Eadie QC Julie Anderson (Instructed by The Government Legal Department)

SIR DECLAN MORGAN: (with whom Lord Reed, Lord Hodge, Lord Sales and Lord Stephens agree)

1. There are two issues in this appeal. The first concerns the correct approach to article 8 of the European Convention on Human Rights ("the Convention") in deportation cases consequent upon criminal offending by those who entered and lawfully settled in the United Kingdom as children; the second concerns the approach to the test of "very significant obstacles to integration" in the receiving state in such cases.

Background

2. The appellant is a national of Iran and was born on 4 October 1995. He arrived in the United Kingdom with his mother on 24 February 2005 having been given leave to enter and indefinite leave to remain under the family reunion policy on 7 February 2005. He does not have any family ties with Iran but speaks Farsi with his mother. The appellant's mother has a friend in Iran whom she has visited on more than one occasion. The appellant has an established private and family life in the United Kingdom which would be interfered with by his deportation. He has a particularly strong bond with his mother and his deportation would be a source of considerable distress to her. He has lived with her all his life. He has had a difficult upbringing because of his father's violent conduct which he has experienced and witnessed.

3. On 8 December 2009 he was convicted of three counts of attempted robbery and sentenced to a 12-month referral order. The appellant was one of a group of young people who attempted to rob others on two consecutive nights at Mortlake Station. On 8 November 2011 he was convicted of possession of an offensive weapon and sentenced to a six-month referral order. That related to possession of a knuckle duster which the appellant said he was carrying for his personal protection.

4. On 14 March 2013, aged 17, he was convicted of six counts of robbery, three counts of attempted robbery and one count of handling stolen property. On 11 April 2013 he was sentenced to three years' detention in a Young Offender Institution. All the robberies were committed at night between 28 December 2012 and 8 January 2013 around Barnes Pond and the Common. The appellant deliberately chose this area to target "young posh people".

5. According to the Sentencing Remarks, […] the victims were aged between 15 and 18 years and the offences were committed at knifepoint. One 16-year-old girl collapsed causing her friends to think she was having a heart attack and the last victim was held around the neck with a threat to slit his throat. The mobile phones and other items stolen were sold so that the appellant could fund his addiction to cannabis. The appellant was apprehended as a result of a police operation consequent upon this spate of violent robberies.

6. In light of his most recent convictions the Secretary of State deemed it to be conducive to the public good to make a deportation order and the appellant was so advised on 15 November 2013. The letter containing reasons for the decision set out the history of offending and the length of the most recent sentence. The Youth Offending Team noted that the latest offence was part of an emerging pattern of offending relating to acquisitive crime, threats of violence and weapons. At the time of the commission of the offence the appellant posed a high risk of serious harm. Having spent a significant period of time in custody his risk of serious harm was considered medium. The risk was heavily linked to lifestyle, peer group and drug use.

7. The Secretary of State accepted that the appellant had established some degree of private life in the United Kingdom and that he had family ties there. Removal to Iran would cause a degree of interference with private and family life but in light of the seriousness of the case this was not deemed sufficient to constitute a breach of article 8 of the Convention. Family and private life could be maintained through modern forms of communication although there would be some short-term hardship in returning to Iran. The appellant could re-establish a private life in Iran on his return.

8. The pre-sentence report dated 9 April 2013 considered that the appellant was an academically capable young man who could articulate himself in an appropriate manner. He had completed some GCSE qualifications. The Secretary of State concluded that those skills and qualifications could be used to gain employment in Iran and provide the appellant with an income. There were no insurmountable obstacles to re-establishing private life there; nor did the interference caused by the appellant's return outweigh the public interest in deporting him.

9. Section 55 of the Borders, Citizenship and Immigration Act 2009 imposed a duty on the Secretary of State to safeguard and promote the welfare of children in the United Kingdom. As the appellant had only recently become 18 years of age it was accepted that his best interests were a primary consideration in making the decision but the Home Office considered that there were other factors which outweighed them. There were no exceptional circumstances to prevent his lawful removal and his removal was in accordance with the Immigration Rules.

Statutes and Rules

10. The relevant statutory provisions and their relationship with the Immigration Rules ("the Rules") were considered in *Hesham Ali v Secretary of State for the Home Department* [2016] 1 WLR 4799 by Lord Reed who gave the lead judgment. The Rules are not law but they give effect to the policy of the Secretary of State who has been entrusted by Parliament with responsibility for immigration control and is accountable to Parliament for the discharge of those responsibilities. The Immigration Act 1971 ("the 1971 Act") requires that they should be laid before Parliament and they may be the subject of debate. They can be disapproved under the negative resolution procedure. There is, therefore, some limited democratic accountability.

11. Section 3(5)(a) of the 1971 Act provides that a person who is not a British citizen is liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good. As explained by Lord Reed in *Hesham Ali* at para 14, Parliamentary and public concern about failures to deport large numbers of foreign citizens who had committed serious offences in the UK led to the passing of the UK Borders Act 2007 which provided in section 32(4) that, for the purpose of section 3(5)(a) of the 1971 Act, the deportation of a foreign criminal is conducive to the public good. This provision did not apply in the case of an offender who was under 18 at the time of the commission of the offence. In those cases the Secretary of State had to make a case-specific assessment. A foreign criminal included a person who was not a British citizen and had been convicted of an offence resulting in a sentence of imprisonment of at least 12 months.

12. The Rules which applied at the time of the decision to deport by the Secretary of State were those laid before Parliament on 13 June 2012 which came into force on 9 July 2012 ("the 2012 Rules"). The 2012 Rules were intended to promote consistency, predictability and transparency in decision-making where issues under article 8 arose and reflected the Government's and Parliament's view of how, as a matter of public policy, the balance should be struck between the right to respect for private and family life and the public interest in public safety by protecting the public from foreign criminals.

13. They were intended to align with the body of case law concerning article 8 and reflect a consideration of the proportionality of deportation. Where a person was liable to deportation the presumption was that the public interest required deportation. A deportation order would not, however, be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Convention. Where deportation would not be contrary to those obligations it would only be in exceptional circumstances that the public interest in deportation was outweighed.

14. An exception to the presumption that the public interest required deportation where a person was liable to deportation was made where the person was aged under 25 years, had spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and had no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

15. Parliament again intervened in this area through section 19 of the Immigration Act 2014. That section amended the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") by inserting section 117C which was entitled "Article 8: additional considerations in cases involving foreign criminals". This new provision stated that the deportation of foreign criminals was in the public interest, that the more serious the offence committed by the foreign criminal the greater the public interest in deportation and that in the case of a foreign criminal who had not been sentenced to a period of imprisonment of four years or more the public interest required his deportation unless one of two exceptions applied.

16. The relevant exception upon which the appellant relied in this case was engaged where the foreign criminal had been lawfully resident in the UK for most of his life, he was socially and culturally integrated in the UK and there would be very significant obstacles to his integration into the country to which he was proposed to be deported. If the exceptions did not apply, the public interest required deportation unless there were very compelling circumstances over and above those described in the exceptions.

17. This amendment to the 2002 Act came into force on 28 July 2014 and was accompanied by a Statement of Changes to the Rules with effect from the same date substituting the terms of the exception set out in the preceding paragraph for that in the 2012 Rules set out at para 14 above. Those were the provisions which applied at all stages of the appeal process.

Grand Chamber cases

18. The appellant entered the United Kingdom lawfully with leave to remain. He is, therefore, a settled migrant. There is an established European Court of Human Rights ("ECtHR") Grand Chamber jurisprudence dealing with cases of deportation as a result of criminal offending by a settled migrant. It is common cause that the Convention does not guarantee the right of an alien to enter or to reside in a particular country and that contracting states have the power to expel an alien convicted of criminal offences. Where the proposed expulsion interferes with a right protected under article 8.1 it must be in accordance with law, justified by a pressing social need and proportionate to the legitimate aim pursued.

19. It is well established that the ECtHR recognises that national authorities enjoy a certain margin of appreciation when assessing whether an interference with a right protected by article 8 is necessary in a democratic society and proportionate to the legitimate aim pursued. That margin can be exercised by Parliament or the executive through legislation or Rules or contained in judicial decisions but is subject to European supervision. It is not suggested that the relevant UK legislation or Rules give rise to any incompatibility with the Convention although the appellant submitted that the Convention affected the approach to their interpretation.

20. *Üner v Netherlands* (2006) 45 EHRR 14 is a Grand Chamber decision confirming that a decision to deport a settled migrant invariably interfered with private life and in an appropriate case with family life. The interference with the private life of the foreign criminal in that case was in accordance with law and pursued the legitimate aim of public safety and the prevention of disorder and crime. The Grand Chamber approved the criteria, set out by the court in *Boultif v Switzerland* (2001) 33 EHRR 50, which should be considered in striking the fair balance between the appellant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other.

21. The Grand Chamber considered the principles to be applied in deportation cases involving settled migrants who lawfully entered the host country as children and committed offences as children in *Maslov v Austria* [2009] INLR 47. The applicant in that case was a citizen of Bulgaria born in 1984 and entered Austria lawfully with his parents and siblings at the age of six. He was granted an unlimited settlement permit in 1999 aged 15. Between late 1998 and early 2000 he committed multiple aggravated burglaries and on one occasion kicked and bruised another boy. His offending was linked to his drug addiction and in September 1999 a condition was imposed on his suspended sentence that he undergo drug therapy. He failed to undergo the drug therapy and committed further offences as a result of which he was sentenced to 15 months' imprisonment and his suspended sentence of 13 months was put into operation. He was ordered to be excluded from Austria in January 2001 and was eventually removed to Bulgaria in December 2003.

22. The court began its consideration of general principles at para 68 by reference to *Üner* and *Boultif*. When the interference with article 8 rights pursued as a legitimate aim the prevention of disorder or crime those criteria ultimately were designed to help evaluate the extent to which the subject could be expected to cause disorder or to engage in criminal activities (*Maslov* at para 70). In cases involving the expulsion of young adults who had not yet founded a family of their own the Grand Chamber identified the relevant criteria at para 71 as:

(i) the nature and seriousness of the offence committed by the applicant;

(ii) the length of the applicant's stay in the country from which he or she is to be expelled;

(iii) the time elapsed since the offence was committed and the applicant's conduct during that period; and

(iv) the solidity of social, cultural and family ties with the host country and with the country of destination.

23. At para 72 the court noted that in assessing the nature and seriousness of the offences committed it was necessary to take into account whether the offender committed them as a juvenile or as an adult. Similarly at para 73 when assessing the length of an offender's stay in the country from which he was to be expelled and the solidity of the social, cultural and family ties within the host country, it made a difference whether the person concerned had already come to the country during his childhood or youth or whether he only came as an adult. The rationale behind making the duration of a person's stay in the host country one of the elements to be taken into account lay in the assumption that the longer a person had been residing in a particular country the stronger his or her ties with that country were and the weaker the ties with the country of his nationality would be. That applied particularly to those who spent most if not all of their childhood in the host country, were brought up there and received their education there (see *Üner* at para 58).

24. Having identified the relevant considerations and commented on how they should be applied the court stated at para 75:

> "In short, the court considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile."

25. The court discussed the margin of appreciation at para 76 and then proceeded to apply the four *Üner/Maslov* criteria from paras 77 to 99. It found that the age of the offender was a decisive feature. There was only one violent offence which consisted of pushing, kicking and bruising another juvenile. The conclusion was that the offences could be regarded as acts of juvenile delinquency. Where expulsion measures against a juvenile offender were concerned the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration. That was not achieved by severing family and social ties through expulsion which was a last resort in the case of a juvenile offender. The court

recognised, however, that very serious violent offences can justify expulsion even if they were committed by a minor.

26. The offender came to Austria in 1990. He committed no further offences after January 2000. It was relevant to take into account the entire period up to December 2003 when he was expelled in looking at the time which had elapsed after the commission of the offences. He spent the formative years of his childhood and youth in Austria. He spoke German and all his principal social, cultural and family ties were in Austria. He did not speak Bulgarian and had no close ties with that country. Taking all of those factors into account the court concluded that the imposition of an exclusion order was disproportionate to the legitimate aim pursued.

Application in domestic law

27. The relevant leading case at the time of the Upper Tribunal's determination in December 2015 was the decision of the Court of Appeal in *R (Akpinar) v Upper Tribunal* [2015] 1 WLR 466. The claimant in the first of the two appeals in that case entered the UK as a nine-year-old and was granted indefinite leave to remain. Between the ages of 15 and 18 he committed a range of criminal offences involving violence, public disorder, acquisitive crime and drug use. This culminated in a conviction shortly after his 18th birthday for violent disorder when he engaged with others in a serious random assault. He showed no remorse. His mother lived in Turkey and there was ample evidence of social, cultural and family ties there. The First-tier Tribunal dismissed his appeal against deportation. Leave to appeal to the Upper Tribunal was refused noting that he had a long history of offending and remained a continuing risk of harm to others.

28. The submission made to the Court of Appeal was that para 75 of *Maslov* laid down a new rule of law creating a consistent and objective hurdle to be surmounted by the state in all cases in which it applied. Irrespective of other factors involved unless the state could show that there were "very serious reasons" for deporting a settled migrant who had lawfully spent all the major part of his childhood and youth in the host country his article 8 rights would prevail. The phrase "very serious reasons" meant "very serious offending".

29. The Court of Appeal rejected that submission. Giving the judgment of the court Sir Stanley Burnton considered first, that the words "In short" at the beginning of para 75 of *Maslov* meant that what followed was a summary of the effect of the jurisprudence discussed in the preceding paragraphs. Secondly, the ultimate conclusion at paras 100 and 101 of the *Maslov* judgment summarised the outcome of each of the criteria set out at para 22 above. That summary offered no support for the view that para 75 imposed a separate test. Thirdly, the circumstances of settled migrants may vary enormously and it would be irrational to apply a single test in

relation to the level of offending in each case. Fourthly, frequent and continuing repetition of offences that are not individually serious may amount to serious offending and justify expulsion.

30. The Court of Appeal examined a range of deportation cases considered by the ECtHR. In some cases para 75 of *Maslov* was relied upon whereas in others the decision was made by reference to the conventional balancing exercise. The conclusion was that there was not a clear and consistent jurisprudence of the Strasbourg court requiring the Court of Appeal to treat "very serious reasons", if the phrase means "very serious offences", as a precondition for deportation of someone who as a settled migrant has lawfully spent all or the major part of his or her childhood and youth in this country.

31. There were a number of relevant Court of Appeal decisions touching on this issue considered in *Akpinar*. It was accepted that in *MJ (Angola) v Secretary of State for the Home Department* [2010] 1 WLR 2699 the "very serious reasons" test was applied. There was no argument before the Court of Appeal in that case as the point was conceded by the respondent.

32. *JO (Uganda) v Secretary of State for the Home Department* [2010] 1 WLR 1607 was a case involving a child who entered the UK aged four and was granted indefinite leave to remain at age 15. He committed serious drug offences at age 20 and shortly afterwards was convicted of firearms offences. Richards LJ gave the judgment of the court and referred to *Maslov*'s case at para 21:

> "Where the person to be deported is a young adult who has not yet founded a family life of his own, the subset of criteria identified in para 71 of the *Maslov* judgment [2009] INLR 47 will be the relevant ones. Further, paras 72-75 of that judgment underline the importance of age in the analysis, including the age at which the offending occurred and the age at which the person came to the host country. This is pulled together in para 75: for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion; and this is all the more so where the person concerned committed the relevant offences as a juvenile."

33. A similar analysis was expressed by Sullivan LJ giving the judgment of the court in *MW (Democratic Republic of Congo) v Secretary of State for the Home Department* [2011] EWCA Civ 1240 at para 24:

> "I do not accept Mr Hall's submission that, notwithstanding *Maslov*, the respondent may lawfully deport a settled migrant such as this appellant even in the absence of any very serious reasons to justify deportation. Whether the reference to 'very serious reasons' in para 75 of *Maslov* is described as a 'rule', 'test' or 'threshold', or simply as the inevitable consequence of the proper application of the *Üner* criteria to the case of a settled migrant who has spent all or the major part of his childhood and youth in the host country, *Maslov* does pull the threads together and in so doing makes it clear in para 75 that very serious reasons are required to justify expulsion in such a case. In the absence of very serious reasons the deportation of a settled migrant will not be proportionate under article 8."

34. The Court of Appeal in *Akpinar* broadly supported both of those formulations and considered that in one of the cases before it the Upper Tribunal wrongly approached para 75 of *Maslov* as a comprehensive test when it should have weighed up the various factors referred to in earlier paragraphs of that judgment and assessed the fair balance between the justification for the interference with the family life of the applicant and the public interest in the prevention of crime as required by article 8.

35. The Supreme Court considered the question of deportation of foreign criminals in *Hesham Ali*. That was a case involving an illegal immigrant but the position of settled migrants was discussed at paras 25 and 26 of the judgment of Lord Reed. At para 25 it was noted that the task of the court or tribunal applying article 8.2 consists in ascertaining whether the decision struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other.

36. *Maslov* was discussed briefly at para 26 where the age of the person concerned and the length of their stay in the country from which they were to be expelled were identified as factors relating to the strength of the public interest in deportation or the strength of the countervailing interests in private and family life. There was no reference to *Akpinar* in the judgment but these observations support the view that the task of the court is to carry out a conventional balancing exercise taking into account the criteria identified by the ECtHR.

Consideration

37. The appellant's primary case is that in considering the expulsion of a young person the following three steps have to be considered.

(i) In order to assess whether the expulsion constitutes a proportionate interference with the young person's article 8 rights it is necessary to consider the four criteria identified at para 71 of *Maslov*;

(ii) Secondly, in considering how these criteria inform the balancing exercise, regard must be had to the child-focussed considerations identified in *Maslov*. That required particular weight to be attached to private life established in the host country during childhood or youth, the significance in article 8 terms of the commission of offences as a juvenile and the positive duty to facilitate integration in such cases.

(iii) Thirdly, in the subset of cases involving a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons were required to justify expulsion. That was particularly so where the relevant offences were committed as a juvenile.

38. It was submitted that this third requirement was a condition subsequent to the application of the first two criteria about which there was no dispute. This submission was made despite there being no express support for the third criterion in *Maslov*. The Grand Chamber confined its analysis at paras 77 to 99 to the application of the four criteria set out at para 71 in a manner consistent with the first two requirements.

39. In order to support that submission the appellant relied upon three chamber decisions of the ECtHR dealing with United Kingdom cases along with a number of other decisions of the ECtHR. The first was *Balogun v United Kingdom* (2012) 56 EHRR 3. The applicant was a Nigerian national born in 1986. He arrived in the UK at the age of three and was granted indefinite leave to remain in 2003. In 2007 he was convicted of two counts of possession of class A drugs with intent to supply and sentenced to three years' imprisonment. He relied upon article 3 for medical reasons but that application was considered inadmissible.

40. In its consideration of the applicant's article 8 claim the court accepted that he had established a private life, that the expulsion was in accordance with law and that it pursued a legitimate aim. The court identified the *Boultif* and *Üner* criteria. It took into account the relevance of age to the nature and seriousness of the offence and the connection with the host country referred to at paras 72 and 73 of *Maslov*. It noted para 75 of *Maslov* as referring to very serious reasons being required to justify expulsion.

41. Applying the law to the facts the court identified the four relevant criteria from *Üner*. It accepted that the offences were committed when the applicant was

over the age of 18 and that the case could be distinguished from *Maslov* which was a case about juvenile delinquency. The court recognised that the applicant had not committed any further offences since his release from prison. In considering the approach to the applicant's length of stay in the UK the court accepted that he had been there since the age of three and had spent virtually the whole of his childhood in the country. The court relied upon *Maslov* to conclude that very serious reasons would be required to outweigh that factor and justify his expulsion. The court then turned to examine the solidity of his ties to the host and destination countries. In summary having balanced the criteria the court concluded that deportation was not disproportionate in the circumstances of that case.

42. There is no indication in this judgment that the court applied a separate test of very serious reasons as a condition subsequent after the examination of the four *Üner* criteria. The child-focussed considerations were taken into account in the application of those criteria. There is no dispute between the parties that age is relevant to the application of those criteria and the cases both at domestic and European level support that approach. The court's decision was based on a conventional balancing exercise having carefully assessed the four *Üner* criteria identified in *Maslov*.

43. The second case involving the UK on which the appellant relied was *AH Khan v United Kingdom* (2011) 55 EHRR 30. The applicant travelled with his family to the United Kingdom from Pakistan in 1978 when he was seven and was granted indefinite leave to remain. His mother and siblings were naturalised British citizens and his six children were all born in the UK. Between 1992 and 2001 he was convicted of numerous criminal offences for which he was sentenced to custodial and non-custodial sentences which culminated in a conviction for robbery in 2001 for which he was sentenced to five years' imprisonment. He was deported to Pakistan in 2010.

44. In its analysis of whether it was necessary in a democratic society in pursuit of the legitimate aim of the prevention of crime to deport the applicant the court again examined the *Üner* criteria. The court referred to *Maslov* in the context of the weight to be given to the length of time in the host country. Its conclusion was, however, based on an assessment of the conventional balancing exercise in article 8 cases:

> "His private and family life in the United Kingdom were not such as to outweigh the risk he presented of future offending and harm to the public and his deportation was therefore proportionate to the legitimate aim of preventing crime." (para 41)

45. The third case is *Abdi Ibrahim v United Kingdom* (Application No 14535/10, 18 September 2012). This was an admissibility decision in relation to a Somali national who came to the UK aged seven and thereafter committed multiple criminal offences both as a juvenile and as an adult. The court identified the *Üner* criteria. It noted the importance of age by reference to para 75 of *Maslov*. Having evaluated the relevant factors the court again carried out the conventional balancing exercise and found the complaint manifestly ill-founded and inadmissible.

46. None of these cases supports the proposition that in carrying out the assessment of the fair balance required by article 8.2 between the appellant's right to respect for his private and family life on the one hand and on the other, the prevention of disorder or crime it is necessary to impose a condition subsequent as a result of para 75 of *Maslov* in addition to a careful consideration of the *Üner* criteria. The analysis in *JO (Uganda), MW (Democratic Republic of Congo)* and *Akpinar* correctly identifies that paragraph as containing a summary of the implications of the preceding paragraphs the effect of which is to recognise that the weight that should be given to those criteria will depend upon the circumstances. Unsurprisingly children are treated differently from adults.

The application of the criteria in this case

47. The appellant successfully appealed the deportation decision to the First-tier Tribunal. The respondent was given leave to appeal on the basis that the tribunal had applied the criteria under the 2012 Rules rather than those under the 2014 Rules. The Upper Tribunal allowed the appeal and directed that it should rehear the case. The findings set out at para 2 above were by agreement preserved. The respondent succeeded in the appeal to that tribunal and thereafter a further appeal by the appellant to the Court of Appeal was dismissed.

48. In addition to his submission that there was a condition subsequent test of "very serious reasons" the appellant submitted that there had been a failure on the part of the Upper Tribunal to give particular weight to the private life lawfully established by the appellant during childhood and youth and the duty to facilitate reintegration.

49. It is clear that a delicate and holistic assessment of all the criteria flowing from the Convention's case law is required in order to justify the expulsion of a settled migrant like the appellant who has lived almost all of his life in the host country. It must be demonstrated that the interference with the appellant's private life was supported by relevant and sufficient reasons (see *Levakovic v Denmark* Application No 7841/14, 23 October 2018).

50. The approach to the supervisory role of the ECtHR was recently restated in *Unuane v United Kingdom* (Application No 80343/17, 24 November 2020) at para 76:

> "The requirement for 'European supervision' does not mean that in determining whether an impugned measure struck a fair balance between the relevant interests, it is necessarily the court's task to conduct the article 8 proportionality assessment afresh. On the contrary, in article 8 cases the court has generally understood the margin of appreciation to mean that, where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for it to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *Ndidi v United Kingdom*, Application No 41215/14, para 76 …)."

51. Unlike in *Unuane* the Upper Tribunal gave careful consideration to the particular circumstances of the appellant's situation. It carried out its assessment of the decision to deport in accordance with the statutory criteria set out in the 2002 Act and the terms of the 2014 Rules. The statute and Rules provided that the public interest required his deportation unless the relevant exception applied or there were very compelling reasons to prevent his deportation. The first step was the consideration of the nature and seriousness of the offences. These were knifepoint robberies at night of victims aged between 15 and 18 years. The offences were pre-planned against vulnerable young victims who were likely to have goods of value. There was a background of previous offences by the appellant of attempted robberies and possession of an offensive weapon. Even though the offender was a youth he was sentenced to three years' detention. He would have received a much longer sentence if he was an adult.

52. It was recognised that although the 2002 Act and the 2014 Rules did not expressly require consideration of the circumstances of the offending it was necessary to do so in order to consider whether there were very compelling circumstances outside the exception which made it disproportionate to deport. The Upper Tribunal noted that the entirety of the applicant's offending occurred between the ages of 14 and 17 and that the most recent conviction was his first custodial sentence. These were, however, plainly very serious, violent offences which distinguished this case from *Maslov*.

53. The legitimate aim in this case was the public interest in the prevention of crime. Consideration was given to the factors impacting upon the risks in this case. The appellant was very close to his mother but her influence had been unable to prevent him engaging over a period of years in acquisitive and violent crime. He had been traumatised by the violence of his father but had benefitted from treatment in respect of that. At the time of his detection he was assessed as posing a high risk of serious harm. The pre-sentence report indicated that he still posed a medium risk of serious harm and that risk was linked to lifestyle, peer group and drug use. The rehabilitative measures provided in the custodial environment had achieved some reduction in risk but the underlying causes continued to give material concern about serious harm. At the time of that assessment he was an adult.

54. The tribunal accepted that he was lawfully resident in the United Kingdom for most of his life, that he had an established private and family life in the UK and was socially and culturally integrated. It then considered whether there were very significant obstacles to the appellant's integration into Iran. That test is set in those terms because it only arises in cases where there will already have been a finding that the offender has engaged in significant offending thereby raising serious concerns about the public interest in the prevention of crime.

55. The approach to integration was considered by Sales LJ in *Kamara v Home Office* [2016] 4 WLR 152 at para 14:

> "In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

56. The tribunal assessed the obstacles to integration by essentially adopting a balance sheet approach. The appellant had not been in Iran since he was nine years

old. He had become used to life in the United Kingdom and the relative freedoms that he enjoyed as a young person in this country were unlikely to be as readily available in Iran. The tribunal accepted that he did not read or write Farsi. He was not aware of any relatives in Iran and there was nothing to indicate that his mother has any contact with any such relatives. He would have difficulties in obtaining employment and/or further education or training because of the length of his absence from Iran and the lack of ability to read or write.

57. On the other hand this was not a case of an individual returning to a country with which he had no familiarity. The appellant spoke Farsi conversing with his mother. The pre-sentence report indicated that he presented as an academically capable young man who was able to articulate himself in an appropriate manner. He obviously had ambitions and was interested in becoming a mechanic. All of that suggested that he would be able to adapt to life in Iran because of his intelligence and his ability to speak the language.

58. In addition the appellant was not utterly isolated from Iranian culture in terms of knowing nothing about it and not having the ability to adapt to it. He had always lived with his mother who had connections in Iran which was where she was born, brought up and lived as an adult. His mother visited Iran in 2008 and 2012 staying for about two weeks each time. She had a friend there whom she visited and with whom she kept in touch.

59. The tribunal accepted that the mother's ties to Iran were not the appellant's ties but it considered that the fact that the appellant's mother had visited Iran, retained a connection with the country and had a close friend there was relevant. Those were factors which could reasonably be said to afford the appellant some assistance in terms of integration. He could remain in contact with his mother. He had at least one point of contact in the country to which reference could be made by or on behalf of the appellant. It was unrealistic to suppose that his mother's friend would provide no assistance or support at all bearing in mind her close friendship with the appellant's mother.

60. The reliance by the tribunal on any contribution that might be made by the mother's close friend was criticised by the appellant. I accept that there was no direct evidence to indicate the nature of the support that the friend could provide but I consider that the tribunal was properly able to infer that the friend was a point of contact. There is nothing to suggest that the tribunal overstated the contribution that the mother's friend could make.

61. The tribunal noted that in the context of the commission of the offences the appellant was plainly and obviously very assertive. That showed a certain robustness of character. That had to be read alongside the evidence from the psychologist about

the treatment that he received in light of the witnessing and experiencing of domestic violence.

62. The tribunal did not simply examine whether the appellant could adapt to life in Iran. It went on to consider how he might integrate in terms of culture and the support he was likely to get from his mother who had visited Iran relatively recently. Applying the test set out in *Kamara* there was ample material to justify the conclusion of the tribunal that the obstacles to the appellant's integration into Iran were not very significant. It follows that this basis for the appeal fails.

63. As indicated in the preceding paragraphs the tribunal had given adequate consideration to the length of the appellant's stay in the United Kingdom and the solidity of social, cultural and family ties with the UK and Iran. In considering the time elapsed since the offence was committed and his conduct during that period the tribunal examined in particular the extent to which his risk of further offending had been affected by the rehabilitative efforts he had undergone in prison. The position remained that he presented as a medium risk of serious harm and his offending was heavily linked to his lifestyle, peer group and drug use. Despite the efforts to reintegrate the appellant he remained a danger to the public.

Conclusion

64. The tribunal give careful consideration to the four criteria derived from *Üner* and *Maslov*. Given the seriousness of the offending and the continuing risk of serious harm resulting from criminal offending it did not consider that the deportation of the appellant was disproportionate or that there were very compelling reasons to prevent it. It gave relevant and sufficient reasons for its conclusion. There was substantial material to support its view that the interference with the private and family life of the appellant was outweighed by the public interest in the prevention of crime. I would, therefore, dismiss the appeal.

65. More than five years have passed since the assessment made by the Upper Tribunal. A decision to deport should reflect circumstances as they are at the time of deportation (see *Maslov* at para 93). Section 5(2) of the Immigration Act 1971 and the Immigration Rules provide a mechanism for the revocation of a deportation order. It will be for the appellant to consider whether there has been a material change of circumstances upon which to found a fresh claim.