Appeal No: SC/02/05
Date of Judgment: 8 February 2007

SPECIAL IMMIGRATION APPEALS COMMISSION

Sitting at Field House

THE HONOURABLE MR JUSTICE STANLEY BURNTON
SENIOR IMMIGRATION JUDGE WARR
MR MICHAEL JAMES

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Between :

G **Appellant**

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

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- -

Mr H Southey (instructed by **Birnberg Pierce & Partners**) for the **Appellant**
Mr J Swift (instructed by the **Treasury Solicitor** for the **Secretary of State**) for the **Respondent**
Mr R Gordon QC / Mr J Johnson (instructed by the **Treasury Solicitor for the Special Advocate)** for the **Special Advocate**

Hearing dates: 20, 21, 22, 23, 24 November 2006

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Judgment Approved by the court for handing down

Introduction

1. The Appellant is an Algerian national. He was born on 4 March 1969. He attempted to enter the United Kingdom in August 1995 using a false French passport. When challenged as to the validity of the passport he made a claim for asylum. That claim was rejected in September 1997, and his appeal to an Adjudicator was dismissed in December 1999. It is to be noted that the Adjudicator specifically upheld the Secretary of State's certificate that paragraph 5(5) of Schedule 2 to the Asylum and Immigration Appeals Act 1993 did not apply, i.e., he rejected G's claim that he had suffered torture in Algeria.

2. In August 1999, the Appellant married a French national. In June 2001 the Appellant was granted residence in the United Kingdom for 6 months based on the fact of his marriage to an EU national. He and his wife have one child, a daughter aged 6 born in this country. He suffers from mental illness. His mental health is vulnerable. A psychological report of August 2005 stated that he met the criteria for a diagnosis of Major Depressive Disorder. In prison he developed a number of psychotic features, including auditory hallucinations. He has been prescribed anti-depressant medication. It is said that he attempted suicide while in detention.

3. Under section 3(5) of the Immigration Act 1971 ("the 1971 Act"):

> A person who is not a British citizen is liable to deportation from the United Kingdom if -
>
> (a) the Secretary of State deems his deportation to be conducive to the public good; ...

4. The Secretary of State considers that the Appellant's presence in the United Kingdom is not conducive to the public good for reasons of national security. Accordingly, the Secretary of State notified the Appellant of his intention to make a deportation order against him. On 16th August 2005, the Appellant appealed against the notice of intention to deport. By reason of the certificate of the Secretary of State under section 97 of the Nationality, Immigration and Asylum Act 2002 and section 2 of the Special Immigration Appeals Commission Act 1997, his appeal lies to this Commission.

The grounds of appeal

5. The Grounds of Appeal (as amended) contend:

(i) the notice of intention to deport is incompatible with the Appellant's rights under ECHR Articles 2, 3, 5, and/or 6 (Grounds at [2] – [5] and [7(i)]), or as a matter of discretion, should be reversed (Grounds at [9]);

(ii) the notice of intention to deport is a disproportionate interference with the Appellant's rights under ECHR Article 8 (Grounds at [6] and [7(ii)]); and

(iii) the notice of intention to deport amounts to a breach of the United Kingdom's obligations under the Refugee Convention on the basis that the Appellant cannot "… be excluded from the definition of refugee status under Article 1F, nor from the protection against refoulement [i.e. expulsion or return] under articles 32 and 33".

The issues

6. The principal issues before us are as follows:

(a) Was the Home Secretary right to conclude that the Appellant's deportation is conducive to the public good in the interests of national security, i.e., by reason of the risk he presents to national security? This has been referred to as "the National Security Issue".

(b) If so, would his deportation interfere with his Convention rights enjoyed in this country? The Convention right engaged is that conferred by Article 8.

(c) If our answer to (a) is Yes, and our answer to (b) No, would his deportation infringe his Convention rights under Articles 2, 3, 5 and 6 by reason of the detention and/or trial and/or treatment he would or might undergo or suffer on his return to Algeria? This issue has been referred to as "the Safety on Return Issue". We note, however, that in so far as the allegations are based on Articles 5 and 6 they go beyond his safety on return.

The authority of previous decisions of SIAC

7. This is not the first decision of SIAC relating to G. On 29 October 2003, SIAC gave judgment in the appeal against the certificate issued by the Home Secretary under section 21(1) of the Anti-Terrorism, Crime and Security Act 2001 ("ATSCA"). On 2 July 2004, SIAC gave its first open review judgment pursuant to section 26(2)(a) of that Act. In addition, there have been SIAC decisions relating to other appellants which address legal and factual issues relevant in the present appeal: the so-called Open Generic Judgment of 29 October 2003 in the ATSCA appeals, the judgment in the lead Algerian deportation case, *Y*, of 24 August 2006 and the judgment in *BB* of 5 December 2006.

8. We raised with counsel the question of the authority of these decisions so far as the present case is concerned. They are clearly authority, although not binding authority, in relation to the legal issues they addressed. It was also common ground that they should also be regarded as persuasive authority in relation to the general factual issues

they decided, such as those relating to conditions in Algeria, in so far as they are common to the present appeal. But we are not bound by those findings of fact: where the parties were different, it would be wrong to treat the decisions as binding, since they were made after hearings in which the present appellant was not represented. We would depart from them if we disagreed with them. Even where the appellant was a party to a previous decision, given the seriousness of the issues before us, we would feel free to depart from it if we considered it appropriate to do so. In our judgment, an appellant must be free to seek to show that a previous SIAC decision in relation to him was mistaken. However, if he is to do so he should in general be required to point to some new relevant evidence or to some legal error on the part of the Commission.

9. G was a party to the appeal decided by the House of Lords under the title *A and others v Secretary of State for the Home Department* [2005] UKHL 71. The order of the House requires SIAC to reconsider the evidence before it at the date of its original determination. We raised with counsel the effect of the order. Mr Southey, for obvious reasons, was unable to make any specific submissions. In our closed session we considered the evidence that was before the Commission when it made its decisions in relation to G. In the case of G, the evidence that might arguably have been obtained by torture was minimal, and in our judgment its exclusion could not have affected SIAC's decisions.

10. In fact, it has not been suggested on behalf of G that the relevant parts of the Open Generic ATSCA judgment were or are wrong, and so we feel free to adopt them. It has not been suggested that the findings of fact in *Y* as to changes in Algerian society and the political situation in Algeria were mistaken, and again we shall adopt them, although we have of course borne in mind the differences between G's case and that of Y. The principal issue in *BB* was the same as that before us, namely the reliability of the assurances that have been given to the UK Government by the Algerian Government in relation to G and persons in a similar position whom the Home Secretary wishes to return to Algeria. It is of persuasive authority, but we have formed our own view on that issue.

The National Security Issue

11. The appellant did not dispute before us the Home Secretary's case that he poses a risk to national security. He signed a so-called waiver, in which he made clear that he did not intend to dispute that case, although he does not admit it. We have nonetheless had to consider the evidence on this issue, for two reasons. First, as we have said, he did not admit that he does pose a risk to national security, or that the Home Secretary's allegations are well-founded. Secondly, we have to decide whether in the light of the evidence we accept the deportation of the appellant would be a disproportionate interference with his rights under Article 8 of the European Convention on Human Rights.

12. The open evidence relied upon by the Secretary of State refers to the GIA (Groupe Islamique Armé), the GSPC (Groupe salafist pour la Prédication et le Combat,

translated in our papers as Salafist Group for Call and Combat, although "preaching" is a more accurate translation of "prédication") and the Abu Doha Group. They are described in the open generic judgment of SIAC in the ATSCA appeals of 29th October 2003, and the judgment in *Y*: see paragraphs 144 to 146 and 282 to 290, 294 and 305 of the former and paragraphs 9. It has not been suggested that these descriptions are inaccurate. We do not propose to repeat those paragraphs in this judgment.

13. The open evidence relied upon by the Secretary of State indicates that the Appellant is an active supporter of various international terrorists and extremist groups including the GIA, the GSPC and the Abu Doha group; that the Appellant is associated with and has contacts with persons who were leading lights in promoting the GSPC and its aims; he has provided important and active support to Islamic terrorists and extremists both in the United Kingdom and overseas; he has facilitated travel for several members of Abu Doha's group, and, generally, was involved in the provision of false documentation (e.g. passports); he has provided false documents to persons involved in terrorist-related activity, including those engaged in planning acts of terrorism. When he was detained under the provisions of the ATCSA in December 2001 he was found to be in possession of false documentation – viz a French National Railways pass. This document carried the Appellant's photograph but was in the name of Abdoo Halim. In addition, the Appellant has been involved in fundraising, and in facilitating the travel of extremists to undertake jihad and terrorist-related training.

14. We refer to paragraphs 7 to 14 of the open judgment on the Appellant's appeal under the ATCSA. SIAC concluded:

> 15. We note the denials [of the Appellant], but we have to consider all the evidence. As will be clear from this judgment, we have reason to doubt some of the Appellant's assertions. But the closed material confirms our view that there is indeed reasonable suspicion that the Appellant is an international terrorist within the meaning of section 21 [of the ATCSA] and reasonable belief that his presence in the United Kingdom is a risk to national security. We have no doubt that he has been involved in the production of false documentation, has facilitated young Muslims to travel to Afghanistan to train for jihad and has actively assisted terrorists who have links with Al Qa'eda. We are satisfied too that he has actively assisted the GSPC. We have no hesitation in dismissing his appeal.

15. Although not positively challenged, we have seen no evidence and, as indicated above, heard no contention that this judgment was mistaken.

16. Similarly, at the time of the first review of the Appellant's certification under the ATCSA, SIAC stated:

> 9. [The Appellant] was released on bail on 22 April 2004 on strict conditions, which amount to house arrest with further controls. But in granting bail, the Commission did not revise its view as to the strength of the grounds for believing that he was an international terrorist and a threat to national security. The threat could be managed proportionately in his case in view of his severe mental illness. That however is no reason to cancel the certificate. There might be circumstances in which he breaches the terms of his bail or for other reasons it was necessary to revoke it. The need for the certification to continue must depend on whether the terms of the [ATCSA] and of the derogation continue to be met.
>
> 10. A number of his contacts remain at large including some who are regarded as actively involved in terrorist planning. There is nothing to suggest that his mental illness has diminished his commitment to the extremist Islamic cause; he has the experience and capacity to involve himself once more in extremist activity. The bail restraints on him are essential; those are imposed pursuant to his certification and the SIAC dismissal of his appeal against it. The certificate is properly maintained.

17. Having reviewed the evidence relied on by the Secretary of State, we have no doubts as to the correctness of these judgments. We accept the Secretary of State's case that the presence of the appellant in this country is a risk to national security.

Article 2

18. Having regard to the fact that capital punishment has fallen into desuetude in Algeria, having been the subject of a moratorium since 1993, it is not surprising that Mr Southey did not advance this ground of appeal. There is no risk of G being executed if returned to Algeria.

Article 8

19. Mr Southey realistically accepted that it was highly unlikely that the deportation of someone who is rightly considered a risk to national security could infringe his rights under Article 8; indeed, he only raised this ground of appeal when it was mentioned by the Commission. G has a family and a home in this country. We do not know whether his wife and daughter will follow him if he returns to Algeria. We assume that his removal would infringe his rights under Article 8.1. However, it is difficult if at all possible to imagine circumstances in which deportation on proven national security grounds would not be justified under Article 8.2. In the present case, it is quite clear that the interference with G's rights under Article 8.1 is justified under Article 8.2.

Article 3

The relevance of G's ill health

20. G is a survivor of anterior poliomyelitis contracted when he was a young child. During detention in this country, he lost weight and became physically deconditioned. He lost the ability to walk. He requires a wheelchair.

21. It is common ground that G suffers from mental illness. We referred above to the diagnosis made in August 2005. We also refer to the report of Professor Ian Robbins of December 2003, in which he opined that G was suffering from a Major Depressive Disorder with Psychotic features, and to a significant risk of self harm and suicide. In a letter dated 30 November 2005, Dr Anne Lane, a clinical psychologist, described his depression as reactive, associated with the uncertainty as to his and his family's future, his social isolation and the restrictions placed on his movement. He suffered from auditory hallucinations.

22. Mr Southey's case is that G's mental illness and the fragility of his mental health result in there being a lower threshold for treatment prohibited by Article 3 than in the case of a person of robust mental health, and accordingly that treatment on his return to Algeria that would not amount to inhumane treatment in the case of a healthy victim would do so in his case. We accept that this is so. We address later in this judgment what is likely to occur if G is returned to Algeria.

Will G suffer treatment prohibited by Article 3 if returned to Algeria?

23. In recent years there have been important social (including political and legal) changes in Algeria. These changes were comprehensively examined and analysed in the Commission's open judgment in *Y*. The most relevant paragraphs of the judgment are paragraphs 177, 179, 181 to 216, 220 to 272, 276, 277, 287, 294 to 300, 302 to 318, 324 to 326, 328 to 350, 378 to 397, 402 to 404. The evidence before us leads us to agree with those paragraphs. Much of our judgment cannot be understood without the open judgment in *Y*. Nonetheless, we have not set out those paragraphs in this judgment, but assume that those reading our judgment will have, or can obtain, copies of the judgment in *Y*.

24. In *Y*, evidence was given on behalf of the Secretary of State by Mr Oakden. His witness statements were before us, and we had the documentary evidence relied upon in *Y*. Mr Oakden did not give oral evidence to us. In his place the Secretary of State called Anthony Layden, a recently retired member of the Diplomatic Service, with extensive experience of the Middle East and North Africa, having been Ambassador to Libya (October 2002 to April 2006), and having served in Saudi Arabia and as Ambassador in Morocco. He is presently employed by the Foreign and Commonwealth Office as Special Representative in relation to the deportation of suspected terrorists. As such, he readily admitted that he is "*partie pris*" rather than an

independent observer. He adopted as his evidence the witness statements of Mr Oakden that were before the Commission in *Y*. Mr Layden has visited Algeria and held discussions with officials there. We were impressed with his evidence,. He is clearly knowledgeable and has considerable relevant experience. He readily accepted points made by Mr Southey and Mr Gordon that were inimical to the proposed deportation of G. We accept his evidence.

25. Having considered the documentary evidence before us and Mr Layden's oral evidence, in open and closed session, we agree with and adopt the passages from the judgment in *Y* to which we referred above. We shall comment further on some of the issues below. In addition, the facts particular to Y differed from those relating to G. One of the principal issues in *Y* was the appellant's entitlement to amnesty under the Charter for Peace and National Reconciliation and the Ordinance of February 2006. In the case of G, there is no question of a right to amnesty. If the Secretary of State's allegations against him are well-founded, and we have held that they are, he has committed an offence or offences under the first paragraph of Article 87a 6 of Ordinance No. 95-11 of 25 February 1995. That Article, in English translation, is as follows:

> Any Algerian national who activates or joins a terrorist or subversive association, group or organisation abroad, whatever its former name may be, even if its activities are not directed against Algeria, shall be liable to imprisonment for a set term of 10 (ten) to twenty (20) years and a fine of 500,000 DA to 1,000,000 DA.
>
> Where the acts described above are intended to harm Algeria's interests, the penalty shall be life imprisonment.

It is only offences under the second paragraph that are subject to the Charter. G is not known to have committed, and is not wanted, for any offence against Algeria. His offences relate to international terrorism, i.e. they fall within the first paragraph. Its exclusion from the Charter was intended to demonstrate, and does demonstrate, the Government of Algeria's participation in the so-called war against international terrorism. Thus G remains liable to prosecution on his return to Algeria. Whether there is a real risk that he will be prosecuted is another question, which we consider below.

26. A number of important propositions were common ground.

(a) Until the relatively recent political and legal changes, although Algeria is a party to the Convention against Torture, there was torture of persons held in detention. Officers of the Département du renseignement et de la sécurité or DRS (Information and Security Department) were particularly involved. It seems that no DRS officer has ever been prosecuted for having tortured or ill-treated a detainee.

(b) The changes in Algerian society to which we have referred have led to a reduction in torture and other ill-treatment of suspects and detainees. Nonetheless, according to an Amnesty International report of July 2006, which was not disputed, "torture and other ill-treatment continue to be used systematically by the "Military Security" (i.e., the DRS). See too the UNHCR position paper of December 2004.

(c) Algeria is a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That has not prevented torture being inflicted by state agents against persons suspected of Islamic terrorism.

(d) The Algerian Government has given the UK Government assurances as to the treatment of its citizens suspected of terrorism who are returned there. In the absence of these assurances there would be a real risk that on his return to Algeria G (and persons in a similar position) would be tortured or subject to other ill-treatment.

(e) It follows that the lawfulness of the Secretary of State's decision to deport G depends on the degree of confidence that the Algerian Government's assurances will be honoured.

(f) In considering that question, the Commission must consider not merely the genuineness of those assurances (and it is accepted by G that they have been given in good faith), but also whether their observance on the ground, by officers of the DRS and others who may be involved with the detention of G, can be relied upon.

(g) If returned to Algeria, G will be detained for a period (the anticipated duration of which is in issue) and questioned with a view to establishing his "status". He is likely to be held incommunicado. There would therefore be the opportunity for torture and ill-treatment.

(h) Algeria is not a party to OPCAT, the Optional Protocol to the Convention against Torture. Algeria has not agreed to international or UK monitoring of its observance of the Convention against Torture. Thus there would be no formal monitoring of G's treatment while in detention.

27. As appears from the foregoing, the crucial question is the reliability of the Algerian Government assurances. The same question arose in *BB*. We refer to, and express our agreement with, paragraphs 3 and 4 of the open judgment in that case. In paragraphs 5 and 6 the Commission said this:

> In this case, the assurances given by the Algerian Government are central to the issue of safety on return. We hold that we can

and should evaluate their credibility and worth. By what yardsticks should they be judged? Without attempting to lay down rules which must apply in every case, we believe that four conditions must, in general, be satisfied:

(i) the terms of the assurances must be such that, if they are fulfilled, the person returned will not be subjected to treatment contrary to Article 3;

(ii) the assurances must be given in good faith;

(iii) there must be a sound objective basis for believing that the assurances will be fulfilled;

(iv) fulfilment of the assurances must be capable of being verified.

6. (i) and (ii) are axiomatic. (iii) covers a number of possible situations. In a country where the rule of law is firmly embedded, it can safely be assumed that an assurance given to another state will be fulfilled – as, for example, assurances given by the United States of America in extradition cases that the death penalty, even if allowed by law for the extradition crime, will not be carried out. In the case of states where the rule of law is less firmly embedded, it will ordinarily be necessary to look for other grounds for believing that their assurances will be fulfilled: principally, that it is in the objective interest of the state to fulfil its assurance. We accept Mr Tam's suggestion that clear evidence of a settled political will to fulfilment can be a further relevant factor; but by itself, it is insufficient, because political personnel and imperatives can change. Only when allied to objective national interest will it provide firm support. The government of the receiving state must also be able to exercise an adequate degree of control over its agencies, including its security forces, to satisfy the reasoning and decision of the court in ***Chahal*** at paragraph 105. As to (iv), verification can be achieved by a variety of means, both formal and informal and by a variety of agencies, both governmental and non-governmental. "Monitoring" is one means of verification, but not the only one. Mr Tam submitted that the capacity to verify was not a condition, but only a factor. We do not agree. An assurance, the fulfilment of which is incapable of being verified, would be of little worth.

28. We agree with these observations, other than that in relation to verification. The possibility of verification of fulfilment of assurances is a very important factor, and in many situations may be effectively a condition of the acceptability of assurances: i.e., the lack of verification may preclude treating an assurance as sufficiently reliable. We

do not, however, agree that verifiability is in all cases necessarily a condition of the reliability of assurances of the kind under consideration. In the present case, however, the difference is academic, since we agree with what was said by the Commission in *BB* on the verifiability of the assurances given by the Algerian Government.

29. The assurances that have been given by the Algerian Government specifically in respect of G are as follows:

> If the person concerned is arrested so that his status may be assessed he will enjoy the following of rights, assurances and guarantees laid down by the Constitution and the national legislation in force concerning human rights:
>
> (a) Appearance before a judge to rule on the legality of his arrest or detention and to inform him of any charges against him and his right to be assisted by counsel of his choice and to make contact with such counsel immediately;
>
> (b) He may receive free legal aid;
>
> (c) He may not be placed in detention other than by the competent judicial authority;
>
> (d) If criminal proceedings are brought against him, he will be presumed innocent until his guilt has been legally established;
>
> (e) Right to inform a close relative of his arrest or detention;
>
> (f) Examination by a doctor;
>
> (g) Appearance before a judge to rule on the legality of his arrest or detention;
>
> (i) Respect for his human dignity under all circumstances.

(There is no paragraph numbered (h).)

30. These assurances were repeated (with correct numbering of the paragraphs) following the Algerian Government's confirmation of G's identity. It was confirmed also that he has no criminal record in Algeria. It does not however follow that there are no criminal investigations relating to him. The Embassy had enquired whether G would be detained on arrival in Algeria, and if so for how long, and whether the Charter would apply to him. These questions did not receive an answer.

31. The assurances must be viewed in the light of the correspondence between the Prime Minister and President Bouteflika, which "welcomes the Algerian Government's commitment to implement this Exchange of Letters in accordance with its obligations under international and national law, and in particular the provisions of the Algerian

Constitution. Thus, this Exchange of Letters underscores the absolute commitment of our two governments to human rights and fundamental freedoms, …" Given the past history of the DRS, and the fact that there have been and may still be differences within the Algerian Government as to the wisdom of the Charter and the policy of national reconciliation, it is relevant that DRS officers have been present during discussions concerning the assurances and have subscribed to them.

32. We refer to, and agree with, the statements in paragraph 8 (other than the reference to the evidence of Professor Seddon, which was not referred to before us) and paragraphs 9 to 11 and 17 to 21 of the open judgment in *BB*, save in so far as they relate specifically to BB. As will be seen, the Commission in that case took a same view of the evidence of Mr Layden as we have.

33. Assurances given by one State to another in contexts similar to the present has recently been relied on by the Divisional Court in *Ahmad & anr v the Government of the USA* [2006] EWHC 2927 (Admin). We also refer to the judgment of the European Court of Human Rights in *Mamatkulov v Turkey* (2005) 41 EHRR 25. In our judgment, these cases do not lay down any principle of law as to the reliability of such assurances. They are examples of such assurances being treated as reliable. *Chahal* (1997) 23 EHRR 413, on the other hand, was a case where, on the facts, the assurances, although given in good faith, were unreliable. Whether, in any particular case they are reliable and if so to what extent and with what consequences will depend on all the facts of the case.

34. We shall address in our closed judgment the issue whether DRS will observe the assurances given by the Algerian Government.

35. All parties in this case referred to the experience of V and of I on their recent return to Algeria, Mr Southey as indicating that G will indeed be detained and held incommunicado, giving an opportunity for ill treatment or torture, and Mr Swift as indicating that following a short period of detention G will be released. V and I were deported to Algeria on 16 and 17 June 2006. The Algerian authorities had been informed that they were being deported on grounds of national security. In March 2006, the British Government had provided the Algerian Government with a description of the activities they were alleged to have carried out in the UK. I was believed to be a senior figure in the Abu Doha group. He had been convicted of credit card fraud and sentenced to imprisonment in July 2003. The UK Government believed that the proceeds of that fraud had been used to fund terrorist activities. He had been detained under the Anti Terrorism, Crime and Security Act. The Algerian Government was informed that V had been one of the accused in the ricin trial, although proceedings against him had been discontinued. V and I were detained on arrival in Algeria and held incommunicado at an unknown destination. They had been released from custody on 22 June, having been detained for six and five days respectively. They had rejoined their families in Algeria. Amnesty International had been able to speak to both men following their release. The British Government is not aware of any report that either of them had been ill-treated. According to Amnesty, the men did not wish to give details of their treatment for fear of reprisals, but neither

alleged any ill- treatment and there is no suggestion that there were any signs of torture. The Amnesty report, dated 23 June 2006, concludes: "No further action is requested from the UA network. … Amnesty International will continue to monitor the men's situation, and take further action as necessary." Amnesty has not reported that any further action has become necessary.

36. It is likely that on his return G will be examined by the competent Judicial Police Department under the supervision of the State Prosecutor's Office "in order to assess his status": see the reply to the *Note Verbale* of 28 June 2006. He is obviously of interest to the Algerian authorities, particularly since the GSPC has not agreed to a ceasefire, and it is now connected with Al Qaeda. Nonetheless, we accept Mr Layden's evidence that the great likelihood is that he will be detained for a period no greater than the five or six days for which V and I were detained, and probably shorter. We see no reason why his treatment should be worse than theirs. In our view, G. will be of less interest to the Algerian authorities than they were. He has not been in Algeria since 1990 or 1991. He has been in detention or on bail on rigorous conditions since December 2001. It is unlikely that he has participated in, or become privy to new relevant information, since that date. The allegations against him are no more serious, and arguably substantially less serious, than those against V and I.

37. Mr Southey referred to the case of Mohammed Ikhlef, returned by Canada to Algeria in 2003, and referred to in the Amnesty International report of July 2006. However, it is noteworthy that the report does not suggest that he suffered torture or inhuman or degrading treatment, but only that he was put "under duress" and insulted. Like Mr Layden, we have no doubt that if there had been an accusation of torture or serious ill-treatment, Amnesty would have mentioned it.

38. Furthermore, although G has committed in the UK offences punishable under Algerian law (i.e., under the first paragraph of Article 87a 6 of Ordinance No. 95-11 of 25 February 1995), we accept the correctness of Mr Layden's view that he is unlikely to be prosecuted, given the desire in Algeria to draw a line under its terrible recent history, and the release of persons detained in prison who had been involved in fundamentalist Muslim terrorism. The country that would be most interested in his prosecution is the United Kingdom, but it has not prosecuted G, notwithstanding the evidence found when his home was searched, and it is not suggested that the UK Government has or will put pressure on the Algerian Government to prosecute him. It is not suggested that any other country has an interest in his prosecution or detention. We refer, in this connection, to the attachment to the email dated 31 March 2006 from Algiers to the FCO. If, contrary to our view, he is prosecuted, and detained for that purpose or following conviction, we do not think that there is a real risk of torture or ill-treatment, in view of the governmental assurances to which we have referred.

39. We accept that G's detention on arrival will provide an opportunity for ill-treatment. We accept that ill-treatment and torture may be carried out by methods that leave no observable physical symptoms. We accept that there can be no absolute assurance that a DRS or other officer will not wish to inflict ill-treatment or torture. But the degree of risk must be assessed in the light of the governmental assurances, the fact that G

has not, as far as is known, committed any terrorist act in Algeria (so that there should be no motive for torture against him personally) and the improving (subject to what we say below) political, social and legal conditions there. So far as verification is concerned, we accept Mr Layden's evidence that arrangements would be made to enable contact to be made with the British Embassy by G himself or his family. The arrangements that will be made are set out in Mr Oakden's fifth witness statement at paragraph 16. We add that we understand why the Algerian Government would view independent monitoring outside a multi-lateral agreement such as OPCAT as an infringement of sovereignty and as reflecting badly on its government.

40. There have been recent terrorist attacks in Algeria, including a bomb in the outskirts of Algiers itself. These do not, in our judgment, lead to the conclusion that the Government of President Bouteflika may be deflected from the policy of national reconciliation: there is no evidence for such a conclusion.

41. A question was raised as to whether the Algerian Government understood the assurances it has given as covering torture and ill-treatment that would infringe Article 3. We have no doubt that they do. The express references to respect for human dignity (as to which see the preamble to the Convention against Torture), to the Algerian Government's commitment to implement the exchange of letters of 11 July 2006 between Mr Blair and President Bouteflika in accordance with its legal obligations under international and national law (which includes its obligations under the Convention against Torture) and the commitment of the two Governments to human rights and fundamental freedoms are unambiguous.

42. A point was also made arising from the lack of any express admission on the part of the Government of Algeria that its agents have committed acts of torture or assassinations and murders. We do not find the absence of any such public admission surprising or of concern: such admissions are relatively rare internationally. We also do not place weight on the failure of the Algerian Government to respond specifically to the question in the UK *notes verbales* as to whether G would be detained on arrival in Algeria and if so for how long, by whom, where and under what provision of the Penal Code. Given the terms of the Government's assurances, the failure is more likely due to error, or to uncertainty as to a specific answer, than concealment of an intention to detain G for a long period or indefinitely.

43. The issue of accountability must be considered in the light of the seriousness of the Algerian Government's assurances. No DRS officer or other government officer has been prosecuted for having inflicted torture on a detainee. But this does not mean that ill-treatment could be inflicted on G with impunity. The law of February 2006 (referred to in the Amnesty International report of July 2006) explains the lack of any such prosecution in relation to previous crimes, and is explicable in terms of the desire to draw a line under the horrors of the recent past. This does not explain the absence of any prosecution since then (although not much time has since passed); but we note the Amnesty report of 17 October 2006 indicating that an examining judge was uninterested in a detainee's allegations of torture. More important is the fact that the assurances that have been given are at the highest level; that their fulfilment is in

the political interests of the Algerian Government, for reasons out in *Y*. The known political sensitivity and importance of the issue for the British Government make us confident that the necessity of compliance with the assurances will be made known to those dealing with G, who will appreciate that disciplinary measures may be taken if they inflict *ex hypothesi* unauthorised ill-treatment. It is because the issue of the deportation of suspected terrorists is politically sensitive and important in this country, and known to be so, that, notwithstanding the economic and political interests in our relationship with Algeria, we think that the British Government would feel compelled to treat any failure to observe the assurances as seriously affecting Algeria's relationship with this country and with the EU.

44. So far as G's mental health is concerned, there is no reason to think that anti-depressive drugs will not be available if required during his detention. We incline to the view that the undertaking to respect his human dignity requires that appropriate medication will be provided, but we do not base our decision on this. Given the desire of the Algerian Government to avoid any accusation of ill-treatment, we think that his mental illness will be taken into account. He will have the right to be medically examined, and any failure to provide appropriate drugs would then be readily perceived. The evidence before us does not establish that there is any real risk that in detention his treatment will be inhuman or degrading, even taking into account his mental illness as evidenced before us.

Articles 5 and 6

45. Article 5 was not relied upon by Mr Southey. It is subject to the same considerations as Article 6, on which he did rely, and to which we now turn.

46. G contends that he faces a trial in Algeria that will not comply with his rights under Article 6. There are two relevant issues: is there a real risk that G will be tried in Algeria? And if so, will his trial be so unfair as to result in his right to a fair trial being "completely denied or nullified"? See Lord Bingham in *Ullah v Home Secretary* [2004] 2AC 323 at paragraph 23 and *EM (Lebanon) v Home Secretary* 2006 EWCA Civ 1531. It is sufficient to address the second issue. The breach of Article 6 alleged is the lack of independence of the judiciary. It was referred to in a remarkably frank and encouraging speech by President Bouteflika at the opening of the National Lawyers' Conference in March 2006. The evidence does not approach that required to establish the denial or nullity of the right to a fair trial. In addition, we see no reason to think that the Algerian Government would put pressure on a judge to secure G's conviction. To the contrary, any such trial would be the subject of scrutiny by NGOs and, doubtless, the UK Government. On the evidence before us, we think that the Algerian Government would go to some lengths to ensure that a trial would be fair and seen to be so, because of the assurances that it has given. Our conclusion is that there is unlikely to be a trial (and it is noteworthy that neither V nor I has been prosecuted) and if there were, there is no basis for a conclusion that the right to a fair trial would be completely denied or nullified. This issue was raised in *BB*, and dismissed peremptorily in paragraph 23 of the open judgment, with which we agree.

Conclusion

47. For the above reasons, G's appeal will be dismissed.

MR JUSTICE STANLEY BURNTON