Appeal no: SC/95/2010
Hearing Dates: 13th – 25th January 2011
Date of Judgment: 18th February 2011

SPECIAL IMMIGRATION APPEALS COMMISSION

OPEN JUDGMENT

Before:

THE HONOURABLE MR JUSTICE MITTING (Chairman)
SENIOR IMMIGRATION JUDGE JORDAN
MR C GLYNN-JONES, CBE

(T6)

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellants:	Mr L Fransman QC and Mr P Jorro Wilson Solicitors
For the Respondent:	Ms L Giovannetti, Ms S Shotton & Mr R Dunlop Instructed by the Treasury Solicitor for the Secretary of State
Special Advocate:	Mr A McCullough, QC & Ms M Plimmer Instructed by the Special Advocates Support Office

The Hon Mr Justice Mitting:

Background

1. The appellant is a 44 year old citizen of Algeria. He has degrees in pharmacology. In 1991, he set up a small pharmaceutical manufacturing company in Algeria called Laboratoire Algerie Medicament. In 1995, he set up a pharmaceutical manufacturing company in France called KRG Pharma. He claims that both businesses were successful and generating substantial profits: $60 million by 1997 (13/26) or $60 million per year (in his oral evidence to SIAC). For reasons which we explain below, we do not accept any evidence given by the appellant about his financial circumstances which is not independently supported by reliable evidence: but we do not doubt that he did establish and run these businesses.

2. By a decision dated 25 March 1998, the Governor of the Bank of Algeria authorised the creation of a limited liability bank company called el Khalifa Bank, with a capital of 500 million Algerian dinars (DA) (approximately $6 million). The authorisation identified the shareholders. The appellant was the majority shareholder. Ali Kaci was a minority shareholder but was named as the director general (E1/122-124). The statutes of el Khalifa Bank, dated 12 April 1998 provided that, of the nominal capital of 500 million DA, 125 million DA was to be "libere a la constitution" (ie subscribed). (E1/51). How much capital was subscribed, and when and by what means it was, are contentious issues.

3. On 1 June 1999, the Algerian company known as Khalifa Airways was incorporated with a nominal capital of 500 million DA. The appellant was the sole shareholder. (9/33). Khalifa Airways acquired a fleet of fixed-wing aircraft of varying sizes, all but six of which appear to have been leased. Six air taxis were manufactured for it by GIE ATR. All or substantially all of the purchase price of these aircraft was paid to GIE ATR (6/565).

4. Between June 2000 and July 2002 seven other "Khalifa" companies, including Khalifa Construction, were incorporated in Algeria with el Khalifa Bank and Khalifa Airways as joint equal shareholders (9/33). The group of companies was collectively known as the Khalifa group.

5. On 22 October 2002 Canard Enchaine published an article reporting that the French external intelligence agency, Direction Generale de la Securite Exterieure had produced a report about Khalifa Airways which claimed that it was in financial trouble, with an occupancy rate below 65%, high operating costs and constant cash flow problems. (1/402).

6. On 27 November 2002 the Bank of Algeria suspended all outward transfers of foreign exchange by el Khalifa Bank. The authenticity of the letter by which that decision was said to have been communicated is in issue (3/1187) but the fact of the decision is not. On 25 February 2003 the Algerian Banking Commission appointed Mohamed Djellab provisional administrator of el Khalifa Bank (E1/397). Under his direction, a profit and loss account for the two years to 31 December 2002 and a balance sheet for that date were

produced. They purported to show that the bank was loss making and heavily insolvent. (E1/403-432). He produced a report dated 27 April 2003 which attempted to analyse the reasons for that state of affairs (E/471-490). On 29 May 2003 the Banking Commission appointed Monsef Badssi as liquidator of the bank. As at 2 September 2007, he estimated that its debts amounted to 109.4 billion DA (approximately $1.35 billion), against which only 3% of the claims by the bank on its debtors had been recovered (E2/339).

7. The last time that the appellant set foot in Algeria was on 21 February 2003 (E1/14). He then flew in a private jet to New York and then to Paris and then to London. He has remained in the United Kingdom ever since. On 27 February 2007 he was arrested on suspicion of money laundering and served with a notice of the Secretary of State's decision to remove him as an overstayer. He then claimed asylum. No decision was made upon that claim until 5 March 2010, when the Secretary of State refused to recognise him as a refugee. To ensure that he could challenge that decision on the merits, he reissued the notice of his decision to remove the appellant as an overstayer. The appellant appealed against that decision and the refusal of asylum. He appeals to SIAC because the Secretary of State has certified the appeal under s97 of the Immigration, Nationality and Asylum Act 2002.

8. On 22 March 2007 at Blida Criminal Tribunal the appellant was convicted in his absence of a number of offences of dishonesty and sentenced to life imprisonment.

9. The appellant has been the subject of two sets of extradition proceedings: the first upon a European arrest warrant issued in March 2007 by France and the second upon an extradition request made in October 2007 by Algeria. The Secretary of State has decided that the Algerian request should take precedence over the French warrant. Different District Judges have upheld both the warrant and the request. Appeals are pending against both decisions. Both appeals have been stayed, pending the determination of this appeal.

The issues

10. The appeal raises three basic issues, the answer to which will determine its outcome:

(i) Are there, in respect of the appellant, "serious reasons for considering that he has committed a serious non-political crime" outside the United Kingdom prior to his admission here? (Article 1F(b) of the Refugee Convention).

(ii) If the answer to the first question is no, does he have a well-founded fear of being persecuted in Algeria for reasons of political opinion, so that the United Kingdom cannot refoule him to Algeria? (Articles 1A(2) and 33(1)).

(iii) If the answer to the first question is yes, would his removal to Algeria put the United Kingdom in breach of its obligations to him under Articles 2, 3, 5 or 6 ECHR?

11. At the request of the appellant, we heard much of his evidence and that of witnesses called by him on the second and third issues in sessions from which the press and public were formally excluded (in fact, no representative of the press or member of the public, apart from a representative of Amnesty International, who was permitted to remain throughout, was present at any stage). Although much of what the appellant said about these issues is already in the public domain, not all of it is. Further, for good reason, one of his witnesses wished to give evidence in private session, by television link from abroad. He could not have been compelled to attend the hearing. We acceded to the appellant's requests, so as to permit him to deploy his case fully. In doing so, we exercised our power to conduct part of the hearing in private under Rule 43(2) of our procedure rules and believe that we have done so for good reason. We can state our conclusions upon the second and third issues and our reasoning upon aspects of them in this open judgment. Our reasoning upon the remainder is set out in a confidential judgment. There is in addition a short closed judgment. We intend that the confidential judgment should be made available to the Administrative and Divisional Courts and to the UN Commissioner for Human Rights and reputable human rights organisations such as Amnesty International and Human Rights Watch, subject to redaction of the identity of the witness referred to above, should they so request. We can see no reason why the Foreign and Commonwealth Office should not supply a copy of the open, but not confidential, judgment to the Ministry of Justice in Algeria.

Article 1F(b)

El Khalifa Bank

12. The first question which must be determined is the true financial state of el Khalifa Bank. The appellant has throughout maintained that it was profitable and solvent and that the actions of the Algerian authorities caused it to collapse and him to sustain enormous losses. If he is right, there can be no question of him having committed the most serious offences of which he was convicted at the Blida Tribunal. If he is wrong and the bank was loss-making and heavily insolvent, it will be necessary for us to determine whether there are serious reasons for considering that that situation arose because of serious non-political crimes committed by him.

13. On any view, el Khalifa Bank was founded on a slender capital base. If the whole amount of its nominal capital was subscribed, it could, on conventional principles, have supported a balance sheet of about 6 billion DA (about $75 million). A somewhat higher balance sheet could have been supported if the Bank of Algeria had adopted a prudential standard based on the Basel 1 accord – which provided for risk-weightings of less than 100% for certain classes of assets, such as loans to first class governments and loans secured on real property. In fact, the Bank of Algeria appears to have adopted a simple ratio: commercial banks were required to hold capital of 8% of assets at risk (ie advances to customers) and to limit advances to any one customer to no more than 25% of capital: see the letter from Mr Khemoudj, general manager of the Direction Generale de l'inspection Generale of the Bank of Algeria to the president of el Khalifa Bank dated 5 August 2001 (3/1162-1164). The

appellant claims that the letter is a forgery and was neither sent nor received. He asserts, in both written (1/170-172[1]) and oral evidence that it could not have been written by anyone with any knowledge of banking because it misstates the true requirement of the prudential ratio, which is that a bank must not lend, other than to the central bank, more than 8% of funds deposited with it. The appellant's assertion is wrong, indeed absurd. It is possible, but unlikely, that he genuinely believes it. He said, we have no doubt truthfully, that he had not heard of the Basel accord – an astonishing admission for a banker. He was wholly unqualified by training or experience, to run a bank: but, even so, he could not genuinely have believed that he could pay interest on deposits and the running costs of the bank by lending only 8% of total deposits commercially, and depositing the rest with the bank of Algeria. If he did believe that the prudential ratio was as he has stated, he flouted it, as we set out below. We have no reason to doubt that Mr Khemoudj's letter of 5 August 2001 was genuine and did accurately state the prudential requirements of the Bank of Algeria.

14. El Khalifa Bank expanded rapidly. Its expansion is summarised in the report prepared by the administrator Mr Djellab dated 27 April 2003. The appellant contends that the report is worthless because of a claimed arithmetical inaccuracy in a part which deals with foreign currency accounts (E1/470). His challenge to this report is typical of his challenges to other aspects of the evidence deployed by the Government of Algeria in the extradition proceedings. His technique is to identify an apparent anomaly in the documentary evidence and to claim that the evidence is worthless and the documents which support it are forgeries. In this instance, as in others, the technique does not work. Mr Djellab was comparing the balance in customers' foreign currency accounts as declared by the branches of el Khalifa Bank with the bank's foreign currency assets held at the Bank of Algeria: $67, 738, 365 and $8, 318, 778 respectively. He stated that the difference was $62, 398, 518. In dollar terms, as the appellant noted, there is an apparent discrepancy of just under $3 million. However, Mr Djellab also gave the figures in Algerian dinars. In dinars, the figures are exactly right, except for what is probably a typing error, which produces a difference of exactly 60,000 dinars (approximately $750). As the appellant accepted, a possible explanation of the difference in dollars is a difference in the exchange rate used in the two accounts to translate dinars into dollars. The appellant advanced no other reason to challenge Mr Djellab's figures. We have no reason to doubt their approximate accuracy.

15. What the report shows is that the bank's branch network expanded from five at the end of 1998 to 62 at the end of 2002 (E1/472). In his statement in support of his claim for asylum, the appellant claimed, untruthfully, that the total was 153 (13/27). There were 244,000 customer accounts (E1/472). The balance sheet increased from 11 billion DA at the end of 1999 to 32 billion DA at the end of 2000, to 58 billion DA at the end of 2001, to 169 billion DA at the end of 2002 (approximately $2.1 billion) (E1/473). This figure does not tally precisely with the formal balance sheet prepared by Mr Djellab's team,

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which stated the balance sheet at 175 billion DA (E1/403). The difference between the two figures is not, for present purposes, material. The formal balance sheet identified approximately 113 billion DA as assets lent at risk (items 4 and 16). The simple prudential ratio required by the Bank of Algeria would, accordingly, have required that the bank's capital should have been not less than 9 billion DA (113 billion DA x 8%). Thus, even if the nominal capital of 500 million DA had been fully subscribed, and if the bank had traded profitably until the end of 2002, the bank would have been very seriously undercapitalised.

16. In fact, according to the profit and loss account prepared by Mr Djellab's team, el Khalifa Bank had sustained losses of 16 billion dinars in the two years to the end of 2002 (E1/412-418). Before deduction of this loss, the balance sheet prepared by them states the liabilities of the bank at 191 billion DA (E1/404). Accordingly, even on the premise that all advances made by the bank to its customers (and others) were recoverable in full, it was not only short of capital, but insolvent.

17. In fact, the position was much worse. Of the total assets held at 31 December 2002, 175 billion DA, 97 billion DA ($1.22 billion) was carried in the books in "comptes de regularisation" (E1/403 and 407-408). These have been translated as "provisional accounts" (in the judgment of DJ Workman) and equated with suspense accounts (comptes d'ordre) in Mr Djellab's report (E1/477). What is referred to are items not yet debited to the account of a specific customer – ie unallocated debits. By 27 April 2003, Mr Djellab's team had been able to allocate 56.7 billion DA to specific customers within the Khalifa group, principally Khalifa Airways (51.4 billion DA) (E1/477). 34 billion DA remained to be attributed. When added to identified debits of 16 billion DA, the total which was owed by Khalifa group companies to the el Khalifa Bank approached 74 billion DA. (E1/478). Accordingly, even if none of the unallocated balance and of the identified debits was attributable to Khalifa Airways – an utterly unlikely hypothesis - Khalifa Airways owed el Khalifa Bank 51.4 billion DA – approximately $640 million. As it happens, the liquidation of Khalifa Airways took place in France. The French liquidator identified unsecured debts of only €11 million (6/561). The only significant assets were a complex of buildings known as "Bagatelle" near Cannes and six air taxis. The remainder of the fleet was leased and had been repossessed for non-payment from September 2002 onwards (6/562). Accordingly, even if the whole of the unsecured debt in the books of Khalifa Airways – the equivalent of 1 billion DA – was owed to el Khalifa Bank, there was a minimum of 50.4 billion DA owed by Khalifa Airways to the bank for which no provision at all had been made in the books at Khalifa Airways. Further, there were no assets to cover it. This analysis demonstrates that el Khalifa Bank had advanced at least $630 million to Khalifa Airways, which it had no hope of recovering and for which no proper provision had been made in its books. This sum certainly understates the true extent of the uncovered debt, but even if it does not, it establishes, beyond question, that el Khalifa Bank was heavily insolvent.

18. Unsurprisingly, individual depositors reached that conclusion when Mr Djellab was appointed. There was a run on the bank: between 3 February and

3 April 2003, withdrawals by depositors had reduced its cash reserves from 34 billion DA to 3.4 billion DA. By 23 April 2003, they were exhausted (E1/485). This occurred despite blocking the withdrawal of funds deposited by institutional depositors. Withdrawals shrank the balance sheet – to 132 billion DA by 31 March 2003 (E1/487). After the appointment of Monsef Badssi as liquidator, the balance sheet shrank further to 109 billion DA. How this was achieved is not set out in the evidence presented to the extradition Court by the Algerian Government, but the reasonable inference can be drawn that claims on financial institutions, totalling 19 billion DA as at 31 December 2002 were realised (E1/403). According to Mr Badssi, claims on other customers produced no more than 3% of the sum nominally owing (E2/339). This may, in some part, have been due to the familiar difficulties experienced by liquidators in collecting debts once the insolvency of the creditor has become known; but in substantial part his difficulty must be attributed to the impossibility of collecting debts from Khalifa group companies, principally Khalifa Airways.

19. The appellant contends that the picture described above is false. He maintains that el Khalifa Bank was, throughout, profitable and solvent, as was the Khalifa group. In his first extradition statement, he made the following claim: "On 27 November 2002 my personal bank accounts and the capital of el Khalifa Bank were frozen. This amounted to approximately $1.7 billion". (13/37). In his first witness statement, prepared for the purpose of his appeal, he said that that was a considerable understatement: "We wouldn't have been destroyed by the freezing of the foreign account and my own account even though together, the money in those two accounts amounted to around five or possibly five and a half billion dollars". This is an absurd invention. Even on the most optimistic view of his claims about the profitability of his business enterprises ($60 million per year for the pharmaceutical companies since 1991 and $200 million per year for the Khalifa group since, at the earliest, June 1999), he could not possibly have accumulated such a fortune. Further, we have no reason to believe that the Bank of Algeria, a central bank, would have allowed a private individual, let alone the appellant, to maintain a bank account with it. Finally, there is no evidence other than the appellant's claim that the Bank of Algeria "froze" any account of his. According to its letter of 27 November 2002, the authenticity of which we have no reason to doubt, all that it did was to suspend outgoing foreign exchange transfers by el Khalifa Bank (3/1187). The appellant's evidence casts no doubt upon the conclusion expressed above: that by the end of 2002, el Khalifa Bank was hopelessly insolvent.

20. How had this situation come to occur? Who was responsible for it? The principal cause of the insolvency of el Khalifa Bank was the use of funds deposited with it to provide undisclosed working capital to other members of the Khalifa group, principally Khalifa Airways, which they could neither service nor repay. A further cause was the expenditure of substantial sums of el Khalifa Bank money on activities which were necessarily loss-making, such as attempts to buy influence in the Algerian state. Neither of these activities could have occurred without the knowledge and approval of the principal shareholder and president of el Khalifa Bank, the appellant. He says that he

was in daily contact with the four or five key individuals in the bank, in particular the treasurers, Fawzi Baichi and Sherif Maaroufi, with whom he would discuss many aspects of the bank's business. He was personally involved in making loans over $10 million – they required a face to face meeting with the individual bank manager, relevant credit head and prospective borrower (1/96 and 101). He says that, as president of el Khalifa Bank, he met the Governor of the Bank of Algeria on several occasions – a fact confirmed as to one occasion by the report of an inspection of the bank conducted between January and March 2002 (9/171). It is simply inconceivable that el Khalifa Bank money could have been used on the scale that it was for the purpose of Khalifa group companies without the appellant's knowledge and approval. Indeed, he must have been the person who directed that it should occur. Further, as he admits, he was personally responsible for many of the decisions to spend el Khalifa Bank money on the buying of influence and other purposes which were nothing to do with its proper management, as we demonstrate in detail below. Incompetent and dishonest management by more junior officials may have contributed to the losses, but they cannot have caused the bulk of them. The conclusion that they resulted from the personal decisions and actions of the appellant is inescapable.

21. The case of the Government of Algeria in the extradition proceedings was that the losses were caused by systematic fraud. It sought to establish particular acts of fraud within the overall picture. We analyse the principal allegations below.

The raising of capital for el Khalifa Bank

22. As already noted, the statutes of the bank provided for a nominal capital of 500 million DA, of which 125 million DA was to be subscribed. The appellant was declared to own 67% of the nominal capital (E1/50-51). Evidence was given to the examining Judge at the Accusation Chamber of the Blida Court about the capital actually subscribed, by Sid Ali Hamoum, treasurer of Tipaza Province (at which the account of the notary Amar Rahal, who oversaw the transaction, was held): he found three cheques from Amar Rahal for 20 million DA, 25 million DA (cheque number 115263) and for 40 million DA. The second cheque (115263) was dated 2 January 1999. (9/79-80). Amar Rahal was only able to identify the second cheque, for 25 million DA (the reference to "billion" in the translation of the examining Judge's report is clearly a mistake for "million") (9/79). He did not suggest that any further sum had been paid through him. On the basis of this evidence, the investigating Judge drew the reasonable conclusion that only 85 million DA had been subscribed. Mohammed Laksassi Governor of the Bank of Algeria in post from June 2001 told the investigating Judge that he was not certain whether or not the capital of el Khalifa Bank was in fact subscribed (9/78). On this evidence, the investigating Judge reached the reasonable conclusions that the founders of the bank did not subscribe more than 85 million DA and that the notarised statutes, which recorded the subscription of 125 million dinars were misleading (9/236). On the basis of that evidence, Amar Rahal was convicted at the trial at the Blida Criminal Tribunal and sentenced to ten years imprisonment (2/413).

23. The Algerian Government's case in the extradition proceedings was that part of the capital in fact subscribed was raised by a loan made by the Staoueli branch of a state owned bank, The Local Development Bank, to KRG Pharma in December 1998 – a loan which was supported by two forged mortgages purportedly dated 1 June 1997.

24. It is incontrovertible, and common ground, that the mortgages were forgeries. They purport to be mortgages of a villa and a flat in Hydra granted by the appellant, his mother, his brother and his sister, to secure loans of 60 million DA and 50 million DA respectively, for one year renewable, to them. (E1/206-08 and 214-16). The mortgages purport to be notarised by Amar Rahal. The appellant's brother told the examining Judge that he had not signed the deeds (9/118-19). Border police records establish that his sister was not in Algeria on 1 June 1997 (E1/370). Amar Rahal told the examining Judge, truthfully, that he did not notarise the deeds. Expert handwriting analysis by Ramdane Louhab, deputy head of handwriting and document comparison at the Central Scientific Police Laboratory confirmed that the signature was not his (9/235 and E1/299 and 361-4). In this instance, the appellant's evidence – that the mortgages were forgeries – is true. There was, however, evidence before the investigating Judge that he was a party to the forgery. Idir Mourad Issir, then director of the Staoueli branch of the Local Development Bank told the investigating Judge that in 1997 the appellant requested two loans, totalling 11 billion centimes (110 million DA) to buy equipment for his pharmaceutical companies ("the drugs industry"). The two of them went to Amar Rahal's office. The latter's secretary Djamel Glimi signed the deeds, because Amar Rahal was abroad. The loans were made, and repaid in 1999 (9/121). The examining Judge was satisfied that the appellant, Idir Issir and Djamel Glimi had participated in the forgery of the two deeds. He was also satisfied that they played some part in the raising of the initial capital of el Khalifa Bank. Both Idir Issir and Djamel Glimi went on to work for the bank. Djamel Glimi still did when, on 24 February 2003, he was arrested at Algiers airport allegedly attempting to smuggle approximately €2 million out of Algeria.

25. The documents we have seen do not establish with certainty that the bogus mortgages were used to raise part of the initial capital for el Khalifa Bank. Nor do they establish, to the same standard, that a loan authorisation, approved on 26 November 1998 and made on 17 December 1998 was supported by them. The loan authorisation was for 50,535,000 DA in favour of KRG Pharma. (E1/195). Precisely that sum was credited to KRG Pharma's account with the Staoueli branch of the Local Development Bank (which had the same number as the number identified on the loan authorisation document) on 24 December 1998 (E1/199). An identical sum was drawn on the same day (ibid). The second cheque paid into the Tipaza Province account by Amar Rahal for 25 million DA was dated 2 January 1999. Amar Rahal told the examining Judge that that payment was funded by an order "drafted on 21/12/1998 on Khalifa Bank benefit". The approximate coincidence of dates means that it is possible that part of the capital was paid out of the proceeds of the loan formally authorised on 17 December 1998. But it is also possible that, as Idir Issir told the examining Magistrate, the loan was for other purposes.

26. The appellant's answer to these allegations is, at some length, to pour scorn on them (1/16-27, reiterated in his oral evidence). He contends that the loan authorisation and the computer printed record of the KRG Pharma account, like the mortgage documents, are forgeries, for the following reasons: the capital of el Khalifa Bank was 500 million DA not 50 million. The loan authorisation post-dated the raising of capital. The statement of transactions on the account begins on 1 July 1985, when he was nineteen and his co-signatory, his former wife, twelve. It deals with transactions until and including 22 August 2006, long after the collapse of the Khalifa group. This is the first example in point of time of the forensic technique noted in paragraph 14 above: identifying apparent anomalies in documents and then inviting the conclusion that they demonstrate forgery. He accepts that the signature card apparently signed by himself and his former wife when the account was opened on 29 December 1996 may well be genuine and does bear what appears to be his own and her signatures. (E1/191). That date coincides with the first transaction noted on the computer printed record of the account – the crediting of 100,000 DA on 29 December 1996. That is the second entry on the record, after the opening date 1 July 1985. It is obvious that that date is not the date on which the account was opened. Although we have no direct evidence about what it signifies, the suggestion made by Miss Giovanetti is plausible – that it represents the date by reference to which the computer search was directed to begin. He then referred to the third entry on the record: the debiting of 84.75 DA on 31 December 1996, against the entry "agios debiteurs/ordinateu(r)". The sum involved is the equivalent of just over $1. The reference is to a computer-generated account charge. It is of no significance. He then went on to identify a further alleged anomaly: six entries marked "effet impaye", whose effect was to reduce the debit balance from 6,931,162.06 DA to 1,533,464.06 DA. All occurred on the same date – 20 February 1997. The fact that each reduced the debit balance demonstrates that they were dishonoured or countermanded cheques or payment orders drawn on this account. The third "anomaly" – account entries in 2001-2006 – is not an anomaly at all: all represent automatic computer generated debits, apart from a final payment on the account drawn to clear it in August 2006. We have no doubt that the computer printed record is a genuine record of a KRG Pharma bank account which was operated by the appellant and did receive a credit of 50,535,000 DA on 24 December 1998. The bogus mortgages may or may not have had something to do with that payment. There does not appear to be any good reason to question Idir Issir's admission to the examining Judge that he and the appellant were present when the mortgages were fraudulently stamped by Amar Rahal's clerk Djamel Glimi. We accept that it is possible that money from the KRG Pharma account was used to provide part of the start up capital for el Khalifa Bank. We have no reason to doubt the evidence of the Tipaza Province treasurer and the admission of Amar Rahal that only 85 million dinars was subscribed by early 1999. We do not know whether further capital was subscribed thereafter. Mr Djellab's report notes that the capital of 500 million DA was "entierement libere" (ie subscribed) (E1/471), but that observation was made at a time when he was struggling to deal with vastly greater deficits and may simply have been an unchecked assumption. The material which we have considered establishes that there are serious grounds for considering that the appellant was a party to crimes of forgery (of the

mortgage documents) and deception (of the Bank of Algeria) in relation to the raising of the capital of el Khalifa Bank, but not more. It is not necessary for us to decide whether this conclusion should, by itself, lead us to determine that the appellant is not entitled to be recognised as a refugee by virtue of Article 1F(b). We prefer to address that question by reference to his conduct of the affairs of el Khalifa Bank once it had been established.

Regulatory breaches and misreporting

27. Algerian banking regulations required el Khalifa Bank to declare its prudential ratios to the Bank of Algeria every six months and to produce audited accounts and a balance sheet six months after the end of the financial year on 31 December (ie by 30 June). The Bank of Algeria carried out periodic inspections of the bank. Evidence about these inspections was given to the investigating Judge by its officials. Correspondence from the Bank of Algeria to the president of el Khalifa Bank (ie the appellant) and one letter from the director of capital markets at el Khalifa Bank, M. Siaci, were produced to the District Judge in the extradition proceedings. Determining what happened has not been easy, for a number of reasons: the report of the investigating Judge is very poorly translated and many documents (for example, reports by inspectors to the Governor of the Bank of Algeria) have not been produced. In consequence, it is not always easy to determine what a particular inspection revealed and in what order events occurred. Our analysis of the evidence is set out below. It may well contain errors of detail, but we believe that it sets out the nature and sequence of events in a way that is broadly accurate and which permits us to draw firm conclusions about them.

28. At least eleven inspections of el Khalifa Bank and/or individual branches were carried out during its four and a half years of independent existence. Some of the inspections led to correspondence which was produced in the extradition proceedings. The appellant asserts that the documents are forgeries, for two reasons: they misstate the prudential ratio (an issue already dealt with above); and they include one letter bearing an el Khalifa Bank stamp. The letter is dated 18 January 2000 and purports to be signed by the director of capital markets, M. Siaci. The appellant acknowledges that he held that position. The letter sets out M. Siaci's complaints about the difficulty of reconciling balances in the accounts at el Khalifa Bank and the Bank of Algeria. Nothing in the text of the letter suggests that it is a forgery created by the Algerian Government or that it was not sent. It is explicable either as a genuine complaint by a bank official seeking to reconcile discrepancies between the two accounts or as a piece of early bluster by a dishonest bank official seeking to distract the Bank of Algeria from investigating accounting deficiencies at el Khalifa Bank by complaining about deficiencies in its own accounting. The fact that the document was included in the extradition bundles suggests inefficiency in preparing the extradition case, not forgery. The remaining documents, all from the Bank of Algeria, appear to be genuine. Further, as we demonstrate below, they reveal in a way that only genuine documents could, what was really occurring. We have no doubt that they are genuine and place considerable reliance on them.

29. The first inspection took place between 22 March 1999 and 29 June 1999. The inspectors discovered that el Khalifa Bank had changed its president and director general, Ali Kaci to the appellant without prior authorisation. This was true, and was demonstrated by a minuted formal resolution (E1/140). Complaint was made about this transgression to the investigating Judge. As a free-standing allegation, it is of no importance. As the inspection made clear, the change had occurred. If the Bank of Algeria had wished to do anything about it, it should have done so then. In fact, the Governor of the Bank of Algeria met the appellant in his capacity as president and director general of el Khalifa Bank on at least one occasion subsequently (9/171 and 9/70-71). The inspectors also commented on inadequate risk controls.

30. In January and February 2000 inspectors were first alerted to what we have called unallocated debits. (9/171). This prompted a letter from M. Khemoudj to the appellant dated 27 March 2000. This noted that, on 11 January 2000, the inspectors demanded a breakdown of the unallocated debits, as at 31 July 1999 and the documents which justified them. The unallocated balance was 5.46 billion DA – a significant proportion of the balance sheet of el Khalifa Bank, which amounted to a little over 11 billion DA at the end of 1999 (E1/473).

31. The third inspection between 11 June and 5 September 2000 revealed deficiencies in information held at branches and, apparently for the first time, the fact that the bank was exceeding the 8% prudential ratio (9/35 and 9/172).

32. An inspection between 26 July and 3 August 2000 revealed that credit to managing executives exceeded 73.6% of the capital of the bank (9/172).

33. An inspection of the Blida branch of the bank between 24 December 2000 and 9 January 2001 revealed transgressions of foreign exchange regulations at that branch (9/172).

34. Lakhdar Mimi and Hamid Sekhara, the auditors of el Khalifa Bank, gave evidence before the investigating Judge as witnesses. (They were subsequently treated as accused persons, convicted and sentenced to a suspended term of imprisonment at the trial (2/413)). The short record of their evidence in the investigating Judge's report is confused, but appears to disclose the following. Audited accounts for the part-year to 31 December 1998 were produced on 15 December 1999. Preliminary accounts for the year ended 31 December 1999 were produced on 26 June 2000. Uncertified accounts for the same period were produced dated 27 January 2001. (9/50 and 58). This part of their evidence is confirmed by a letter from Mr Khemoudj dated 15 February 2001, which notes that the auditors had refused to certify the accounts for 1999 (3/1158). Hamid Sekhara told the investigating Judge that final accounts were produced by May 2002, following an authorisation granted by the Tribunal at Cheraga to produce them late (9/58). Mr Khemoudj's letter noted the reasons for their refusal to certify the 1999 accounts: late production of the accounts, deficient internal controls and feeble accounting controls. He said that the situation could not continue.

35. A declaration of prudential ratios as at 31 December 2000 was made. According to the report of the investigating Judge, it was checked and found to

be seriously non-compliant on 16 January 2001 (9/35). Nevertheless, it was not until 5 August 2001 that Mr Khemoudj, on behalf of the Bank of Algeria, sent a formal letter to the appellant notifying him of the identified breaches of prudential requirements: the capital ratio was only 4% (capital of 685 million DA (the increase from 500 million DA nominal is unexplained) supported assets at risk of 15.9 billion DA) in consequence, a capital injection of 590 million DA was required. More than 25% of the capital of the bank had been advanced to each of eleven customers, headed by Khalifa Airways. (3/1162-4).

36. Between 15 May and 10 October 2001 inspections revealed breaches of foreign exchange regulations at several branches of el Khalifa Bank (9/173). This led to letters from an official at the foreign exchange division at the Bank of Algeria dated 6 November and 27 December 2001 insisting that unauthorised branches should cease foreign exchange activity. (3/1167-8 and 1171-2).

37. An inspection between 16 October and 15 November 2001 produced the conclusion that, as at June 2001, the capital ratio of el Khalifa Bank had improved from 4%, but was still inadequate at 5%. (9/172). Four months later, on 20 March 2002, Mr Khemoudj wrote to the appellant telling him that examination of the declaration of prudential ratios as at 30 June 2001 revealed that deficiency and that more than 25% of the capital of the bank had been advanced to one customer ALUOR. (3/1174). The declaration which he examined must have been false. According to Mr Djellab's report, the balance sheet of el Khalifa Bank increased from 32 billion DA at the end of 2000 to 58 billion DA at the end of 2001. Further, it clearly contained no reference to advances to Khalifa Airways which must, by June 2001, have substantially exceeded the capital of the bank. This is the first instance of blatant fraud in the reporting of financial ratios to the Bank of Algeria.

38. According to the Vice-Governor of the Bank of Algeria, Ali Touati, he sent a report to the Ministry of Finance on 18 December 2001. Evidence was given to the investigating Judge that the report was mislaid in the Ministry. On an unspecified date, a senior official at the Ministry, Abdel Krim Lakhal, established a committee to report upon the enquiries and actions of the Bank of Algeria. A report (which has not been produced) was sent to "the Chief of Government" on 11 November 2002. Ministerial committees were then established, whose deliberations were, in fact, overtaken by events. (9/68-70).

39. Meanwhile, on 31 March 2002, Mr Khemoudj wrote to the appellant demanding that the declaration of prudential ratios as at 31 December 2001 be produced. Something must have been, because on 11 August 2002, a different official at the Bank of Algeria, B. Saidane wrote to the appellant, noting that the prudential ratio was lower than required, at 5%, and that more than 25% of the capital of the bank had been advanced to one client, Mahieddine Tahkout (1182/3). A secure inference about the contents of the declaration can be drawn from this document. The advance to Mahieddine Tahkout was 236,583,000 DA. It was said to represent 26.77% of the capital of the bank. The capital of the bank must, accordingly, have been stated to have been approximately 884 million DA. If the capital ratio was 5%, the total balance

sheet must have been stated as approximately 17.67 billion DA. According to Mr Djellab's report, the true figure was 58 billion DA. Again, there was no mention of Khalifa Airways. Like the declaration as at 30 June 2001, this declaration must have been false.

40. On 9 June 2002, Mr Khemoudj wrote to the appellant demanding, amongst other information, annual accounts for 2000. The auditor Lakhdar Mimi told the investigating Judge that he issued accounts for 2000 on 17 December 2002 (9/50).

41. By October and November 2002, if not before, the fact that there was something seriously wrong at el Khalifa Bank was beginning to become clear to officials at the Bank of Algeria. An inspection between 14 and 28 October 2002 revealed missing and badly organised files and the fact that "Khalifa Company" debts had not been declared to the Bank of Algeria. This must be a reference to Khalifa group company debts. (9/173). An inspection conducted between 3 November and 21 December 2002 revealed extensive breaches of foreign exchange regulations. (9/173). On 13 November 2002, Mr Khemoudj wrote to the appellant, referring to his previous letters (3/1162, 1174, 1176, 1182 and 1192) and noting that the capital of the bank was still inadequate and that 40 % of the assets of the bank were unallocated debits. (3/1185). All of this activity led to the decision to suspend outgoing foreign exchange transfers by el Khalifa Bank on 27 November 2002. Contrary to the evidence of the appellant and Professor Joffe, the reasons given for the decision were not just that a technical breach of foreign exchange regulation had occurred, but that the serious breaches of banking regulations identified above had been committed.

42. On that analysis, the following conclusions can be securely drawn:

(i) regulation of el Khalifa Bank by the Bank of Algeria was, at best, naïve and ineffective;

(ii) from 1999 onwards, the bank committed wholesale breaches of banking regulations, from non-production of annual accounts to the flouting of prudential ratios;

(iii) from, at the latest, 2001, the documents produced by the bank to the Bank of Algeria told deliberate lies about its parlous financial state;

(iv) this state of affairs could not have existed without the knowledge, approval, indeed direction, of the appellant;

(v) by November 2002, it had begun to dawn upon officials at the Bank of Algeria, and officials and politicians in the Ministry of Finance, that the bank had been flouting banking regulations and was in serious trouble.

The removal of cash from el Khalifa Bank

43. Youcef Akli, assistant director general of el Khalifa Bank, in charge of its principal (ie central) fund told the investigating Judge that he received notes

from the appellant instructing him to give to him sums of money in dinars and foreign currency, which he fulfilled. The appellant also ordered him to execute similar requests by Abdelhafidh Chachoua, Salim Bouabdellah and Ismail Karim. He also gave money to Redha Abdelwaheb and Abdelwaheb Dellal. The sums involved were 2 billion dinars and 8 million euros (9/41-42). Abdelhafidh Chachoua, director general of security at the bank, confirmed that he obtained from Youcef Akli sums ranging between 300 million DA and 1 billion DA, on the orders of the appellant. He told Abdelwaheb Dellal to take the money from Youcef Akli and give it personally to the appellant in a closed envelope (9/43). Abdelwaheb Dellal told the investigating Judge that he carried out Chachoua's orders (9/43). Fouzi Baichi, assistant director general at the bank, said that he witnessed the provision of large sums of money by Youcef Akli to the appellant. He also spoke about an attempt to "settle" the financial gap left by the withdrawals (9/40). Hammou Nekache, assistant finance director at the bank told the investigating Judge that on 25 February 2003 Baichi and Chachoua told him that the appellant had asked him to provide documents justifying the gap produced in the central funds by the withdrawals. On the following day, 26 February 2003, Youcef Akli produced eleven advice notes, in dinars and in foreign currency, to account for the difference. Hammou Nekache said that he rejected them, by rejection notes dated 8 March 2003. The advice and rejection notes were produced in the extradition proceedings (E2/2-45). Youcef Akli admitted creating the documents at the appellant's request (9/42). Mohammed Chebli, principal cashier at the bank, admitted to the investigating Judge that he initialled the advice notes created by Akli, but did so without knowing their contents (9/42).

44. We treat the account given by those individuals of the attempt to cover up deficiencies at the end of February 2003 with some reserve. That they did so is indisputable; but their motive or principal motive in doing so may have been to cover their own backs. Blaming the appellant for giving the instructions to cover up the deficiency was a simple and, at their trial, unopposed means of shifting part of the blame onto him. Further, and in any event, the losses thus covered up amounted to no more than approximately $35 million, a small part of the total deficiency in the assets of the bank (E1/476).

45. There is, however, less reason to discount their evidence that they routinely withdrew cash from the central fund to give to him. Redha Abdelwahab told the investigating Judge that in November and December 2001, on the instructions of the appellant, he went to collect money in an envelope to pay workers at the appellant's home. From December 2001 until February 2003, he regularly obtained 500,000 DA from the central fund to take to the appellant at his new villa, to pay the wages of his employees (9/44 and 225).

46. Four managers of el Khalifa Bank branches told the investigating Judge that they gave money to various individuals, almost all employees of el Khalifa Bank, in accordance with instructions given by the appellant. They were Hossine Soulami at Hussein Dey Les Abattoirs branch, Djamel Aziz at El Harrach branch, Hakim Kers at Oran branch, and Noureddine Chadi at El Kolea branch. (9/93-100). Djamel Aziz and Hossine Soulami said that they did so against hand-written notes bearing the seal of el Khalifa Bank and the

signature of the appellant. Ten such notes were produced in the extradition proceedings (E2/73-86, 133-137 and 168). The appellant dismisses them all as forgeries. Hossine Soulami also produced a typed letter bearing the seal of el Khalifa Bank and the name and signature of the appellant dated 25 November 2001, informing him in peremptory terms that he was at the disposition of the bank and was obliged to execute orders given to him by the appellant, whatever they were and in whatever form they may be given – on plain paper, in an official document of the bank, or by telephone. (E2/216). The appellant says that this document, too, is a forgery. Further, he picks up on a minor error in the judgment of District Judge Workman in paragraph 18 of his judgment, in which he describes the document as a "call to order" addressed to branch managers (plural). (13/211). The letter is in fact addressed only to the manager of the Les Abbatoirs branch. He describes this error as significant and disturbing. It is not. This is yet another example of the appellant's forensic technique of using a minor error or anomaly to attempt to undermine an otherwise damaging aspect of the case again him.

47. All of the individuals named above, except two (Dallal and Chadi) were prosecuted and convicted at the Blida trial. Akli, Chachoua, Kers, Aziz, Soualmi, Chebli, Nekache and Abdelwahab received sentences of immediate imprisonment ranging from two to ten years. The remainder were convicted in their absence and sentenced to twenty years imprisonment. It is very unlikely that the former would have admitted wrongdoing, at peril of receiving significant sentences of imprisonment, unless they had committed the crimes which they admitted. Unless those crimes were committed against el Khalifa Bank and, therefore, against the appellant, the only explanation for their conduct is that which they gave: that they acted under his orders. We cannot be certain that they told the truth and that the documents which supported their account are genuine, because we have not heard them give evidence and because the documents have not been submitted to handwriting analysis; but that material establishes, at least, that there are serious reasons for considering that the appellant was principally responsible for the crimes of which they were convicted.

Payments made other than for the benefit of el Khalifa Bank

48. Mr Djellab, the administrator of the bank, Mr Badssi, its liquidator and Nourredine Bouhbel, an auditor designated by the investigating Judge to examine the bank's finances, produced evidence in the extradition proceedings of a number of transactions in which substantial payments were made out of bank funds which, they claimed, were not for its benefit. We will examine only those transactions in which the evidence is either undisputed or clear.

49. Two contracts were signed on behalf of the "Khalifa group" for the purchase of desalination plants from HUTA-SETE Marine Works Ltd and SETE Technical Services S.A. for delivery to Algeria. The first is dated 24 March 2002. The second is undated, but appears to have been signed a little before then. The appellant contends that the second contract was only a draft and was replaced by a further contract later. Nothing turns upon that. The first contract was for two small desalination plants, at a cost of $3.5 million. The second was for one large and two small desalination plants at a cost of $51.8 million

(E2/224-243). The plants were to be a gift to the Government and people of Algeria. In his witness statement, the appellant treats them as a gift by him: "altogether, those plants cost me around $30 million…" (1/130).

50. The two small plants were paid for in full. $23 million dollars was paid towards the cost of the other three plants. SETE Technical Services SA confirmed that these payments had been made in a letter dated 14 May 2003. Genuine invoices, foreign exchange authorisations by the Bank of Algeria and SWIFT documents prove that the payments were authorised and made – in the currency stipulated in the contract, US dollars (E2/267, 269, 286-300 and 328-334).

51. Between 26 June and 10 July 2002, bogus invoices on HUTA-SETE forms were produced to the Bank of Algeria to obtain permission for the transfer of 45 million euros. No SWIFT payment records have been produced for these amounts. A bogus letter on SETE Technical Services SA notepaper dated 8 January 2003 confirmed receipt of $67.5 million. (The forger had overlooked the fact that the bogus invoices and foreign exchange requests had been denominated in euros).

52. The appellant denies all knowledge of these bogus documents; and there is nothing directly to contradict his denial.

53. In May 2002, the appellant attended the Cannes Film Festival with his then girlfriend. He described what then happened:

> "While I was in Cannes, I was suddenly overwhelmed by a desire to buy a house there. I saw Bagatelle and fell for it immediately. It was a large complex consisting of three villas, grounds and five swimming pools. I could have bought it from my own money but decided to make it a Khalifa Airways purchase – an investment on behalf of that company."

The purchase money came from el Khalifa Bank, as the SWIFT payment details confirm (E3/183-194). They demonstrate that €37,123,885.80 was transferred to the notary who acted in the transaction. Significantly, there are no accompanying foreign exchange authorisations by the Bank of Algeria. Miss Giovanetti submits that it is probable that the authorisations obtained on the bogus SETE invoices were used to effect these transfers. Her submission is reasonable. The appellant asserts that the money was traced by French authorities into the French bank account of Khalifa Airways. (1/134-5). We have been shown no such evidence. On what we have seen, Miss Giovanetti's hypothesis is the most likely.

54. In a complicated series of transactions, $32.8 million was transferred, via Khalifa Airways' account at Khalifa Bank for the leasing of a Boeing business jet by Melissa Nourjihane LLC, an American company of which the appellant was sole shareholder. (E3/195-329). The aircraft was for the appellant's use.

55. Other payments were made, to curry influence or to promote the appellant's image as a high-flying and wealthy entrepreneur: for three armoured vehicles,

two for the President and one for the Chief of the General Staff; for public relations activity in the United States; for football in Algeria and in France; and for the gift of two Bell 412 VIP helicopters in December 2002 to the General Staff – a desperate attempt to buy influence when the (financial) end was near.

56. None of this money was legitimately expended for the benefit of el Khalifa Bank. Even if some or all of it is to be treated as being made by other Khalifa group companies, principally Khalifa Airways, it simply illustrates and reinforces the findings of Mr Djellab's team that there were large unallocated and irrecoverable debits attributable to Khalifa Airways. Further, on any view, the appellant's own explanation for this type of expenditure is revealing: it shows, as was the fact, that he treated money deposited at el Khalifa Bank as his to spend as he wished.

Miscellaneous

57. A great deal of evidence was given to the investigating Judge about the following topics: the depositing of money at el Khalifa Bank, mainly by directors and managers of state institutions, but also by private companies and a representative individual depositor; the offering of inducements to some of them – free travel on Khalifa Airways, cars, monetary commissions and free membership of a spa; and a small number of improper individual banking transactions. It is unnecessary to say more about this aspect of the case other than that it is unsurprising to find evidence of extensive low level fraud and corruption in the circumstances described above.

Algerian law

58. District Judge Workman was satisfied that the conduct which he considered, which is substantially the same as that analysed above, was punishable under the law of Algeria and would constitute an offence in the United Kingdom punishable by more than 12 months imprisonment (13/207). We have heard undisputed evidence from Professor Filali, an impressive and knowledgeable witness, about Algerian law. He explained that the conduct described above, if proved, would, in Algerian law, give rise to a number of offences, of which the most serious was aggravated theft, contrary to Article 354.3 of the Criminal Code. Theft is aggravated if it is committed by two or more persons. When committed to the prejudice of the state, the maximum punishment is life imprisonment: Article 382 bis (E1/10-11). In English law, the conduct described would include offences of theft (for example, the dishonest removal of cash from el Khalifa Bank), but the overall conduct would be charged as conspiracy to defraud and/or fraudulent trading. In Professor Filali's view, prejudice to the state would readily be established by the loss caused to state institutions which deposited money with the bank – put at 75.8 billion DA gross by Mr Djellab (E1/487).

Conclusions on Article 1(F)(b)

59. The conclusions set out above satisfy us, by a wide margin, that there are serious reasons for considering that the appellant has committed serious non-political crimes before his arrival in the United Kingdom.

60. Mr Fransman QC invites us to consider whether or not offences of dishonesty, however serious, can amount to serious non-political crimes for the purposes of Article 1(F)(b). There is no international agreement or settled case law on the issue. UNHCR has proposed that a presumption of serious crime might be considered as raised by evidence of commission of the offences of homicide, rape, child molesting, wounding, arson, drug trafficking and armed robbery. This definition does not purport to exclude other offences, yet it is sometimes treated as doing so: see, for example, the judgment of Murphy J in the High Court of South Africa in *Tantoush v The Refugee Appeal Board* 11 September 2007, paragraph 114. Professor Hathaway refers in his work "The Law of Refugee Status" at page 224 to "the withholding of protection only from those who have committed truly abhorrent wrongs". Others adopt a more extensive definition. Atle Grahl-Madsen in "The Status of Refugees in International Law", published in 1966, interpreted the clause to mean "only crimes publishable by several years imprisonment". Professor Godwin-Gill in "The Refugee in International Law", published in 2007 suggests at page 197 that "The following offences might also be considered to constitute serious crimes, provided other factors were present: breaking and entering (burglary); stealing (theft and simple robbery); receiving stolen property; embezzlement; possession of drugs in quantities exceeding that required for personal use; and assault". In *Xie v The Minister of Citizenship and Immigration*, Kelen J sitting in the Federal Court of Canada, held that the embezzlement of C$1.4 million by a person holding a position of trust qualified as a serious non-political offence. His decision was upheld by the Federal Court of Appeal on 30 June 2004: "…a claimant can be excluded from refugee protection by the Refugee Protection Division for a purely economic offence" (paragraph 40).

61. We can see no ground for limiting the definition to serious offences of violence, as the UNHCR statement itself acknowledges, by including the offence of drug trafficking. The justification for including drug trafficking may be that it has the potential to cause serious harm to a large number of individuals and, in some states, to social order and the functioning of the state. Some economic offences can have similar effects: large scale embezzlement, by senior officials and politicians in central government; corruption in similar circumstances; the pillaging of state assets by individuals for private gain; large scale fraud causing grievous loss to many victims – for example, the dishonest stripping of a large pension fund. All such crimes, in our view, clearly fall within Article 1(F)(b). The conduct alleged against the appellant falls squarely within this category of crime. There are serious reasons to consider that he perpetrated a fraud on a very large scale which caused substantial and widespread loss to state institutions and private individuals and companies. Wherever the line may be drawn, his case falls well on the side of exclusion.

62. Mr Fransman submits that it would be an error of law for us to begin consideration of the case by conducting the analysis set out above without first considering the political context. He submits that we are required, as a matter of law, to start with a "holistic" approach. We do not agree. The approach to be adopted must depend upon the circumstances of the case. Here, the appellant contends that a profitable and solvent business was brought down by politically motivated decisions directed by the President of Algeria. The Secretary of State contends that the Algerian Government has sought the extradition of the appellant to stand trial for economic crimes arising out of the collapse of a loss-making and insolvent business – a state of affairs caused by fraud directed by him. Given the stark conflict between the two cases, we consider that the only sensible starting point is that which we have adopted: to analyse, first, the financial state of el Khalifa Bank, to see which of the rival contentions about it's condition is right; and secondly, if satisfied that it was unprofitable and insolvent, as we are, to ask how that came about. We accept that we must also consider the political context, which we have done in the confidential judgment. For the reasons explained there, we are satisfied that, although the case has had and still may have political consequences for the Government of Algeria and President, which may at one time have seemed both adverse and serious, the Algerian Government has not sought and is not seeking the extradition of the appellant to punish or get back at him for his political views and actions, actual or perceived. Even if we had begun with the political context, we would have reached the same conclusion under Article 1(F)(b).

ECHR

63. It is settled law that, notwithstanding his exclusion from refugee protection, the appellant could not be returned to Algeria if to do so would put the United Kingdom in breach of its obligations to him under Articles 2, 3, 5 or 6 ECHR.

Article 2

64. The appellant claims that he has received death threats, communicated to him by a variety of sources (identified in the confidential judgment). It is claimed that that evidence is supported by the "Osman" warning given to him on 13 August 2008. We do not accept that death threats or warnings were communicated to the appellant. For several years, he lived the life of a wealthy, high-flying and well connected entrepreneur. When his business empire collapsed, he turned to politics as a means of escaping from the predicament which that collapse created for him. In so doing, he claimed a political importance which he has never enjoyed. It is possible, but unlikely, that he believes his own myth which includes, as one of its elements, the claim that the Algerian Government (or at least significant elements within it) from the President downwards wished him dead. There is no basis for that claim. As Mr Layden put it, the President surely regards him as a fly to be brushed from his shoulder. The "Osman" warning adds nothing material to that assessment. Inspector McGeary, who authorised the giving of the warning has explained in a witness statement dated 9 December 2010, that his assessment was that the information upon which the warning was based disclosed a "minimal/minimum" risk, which did not fall within the standard operating

procedures for "threats to life" of his service. We have seen the material upon which the warning was based. It is accurately described by Miss Giovanetti as "a report of rumours" and no more. There has been no repetition of the rumours. Nor has anything occurred subsequently to suggest that they might have been well-founded. We are satisfied that there are no substantial grounds for believing that state agents have ever posed a real threat to the life of the appellant or that his life would be at risk if he were to be removed or extradited to Algeria.

Article 3

65. As always, we begin with an appreciation of the general situation in Algeria. We adopt, without repeating, the findings which have been made by SIAC in every Algerian case from *Y* to *T*. The situation remains substantially as there described. The only significant development since is the unrest which has occurred in the first few weeks of this year. All knowledgeable observers of Algeria, including Mr Layden, accept that Algeria has continuing, serious, long term problems, principally social and economic. The greatest of them is the large pool of poor, reasonably well educated, unemployed or underemployed young people. The economy is still dominated by the state and, in significant respects, sclerotic. There is a stark contrast between the prosperity and privileges of the elite and the living conditions of the much more numerous poor. Increases in the price of food together, probably, with political discontent led to street protests and a number of instances of self immolation. The authorities have reacted by reducing import tariffs on food and/or restoring subsidies and by relatively restrained policing. There have been no reports of shootings or of serious injuries or death caused by police actions and, so far, no protests on the scale of those which have occurred in Tunisia or Egypt. Against that background, terrorist attacks, mostly instigated by AQM and armed counter-terrorist measures continue. We cannot predict the future. All that we can do is to observe that nothing has yet occurred which is likely to cause Algeria to retreat from the course upon which it has been set since the winding down of the civil conflict in the mid-1990s – towards a normally functioning civil society. All, including Mr Layden, acknowledge that there is a long way to go.

66. Nothing in current circumstances gives rise to any greater risk of torture or ill-treatment of the appellant than would have faced him at any time since his flight from Algeria in February 2003. That risk was, and is, negligible and is not posed by state agents. SIAC has always acknowledged that, in the absence of assurances from the Algerian Government, an individual suspected of having committed acts of terrorism would be at risk of ill-treatment or worse at the hands of the DRS. There has, however never been any evidence that an individual charged with ordinary criminal offences and detained by the non-security police or prison authorities faces such a risk. No evidence of ill-treatment of such a person has been presented to us in this hearing and we are not aware of any instance of such ill-treatment, apart from the incident in February 2008 in el Harrach Prison, which we analysed in paragraph 23 of our open decision in *QJ*. We have not been referred to any subsequent incidents of serious violence in an Algerian prison. We have no reason to depart from the

view expressed in *QJ* that the incident was exceptional and that the Algerian authorities responded appropriately to it. The appellant faces extradition on ordinary criminal charges. He will be dealt with by the ordinary criminal justice system. There is not, and never has been, any risk that he would be detained by the DRS and interrogated about connections with terrorism. There is some evidence that the Algerian authorities believe that he may have engaged in financing one or more terrorist groups – Maitre Amara said so in June 2006 (8/20). In this respect only might an assurance have been required from the Algerian Government about the treatment of the appellant on return. The assurance has been given: see paragraphs iii, iv and viii of the document referred to below. In all other respects, there are no serious grounds to believe that, even without the assurances, he would face a risk of ill-treatment at the hands of the Algerian authorities of such severity as to approach, let alone cross, the Article 3 threshold if it were to occur in a Convention state. In fact, we are satisfied that the chance that the appellant would have been interrogated by the DRS, but for the assurances, was so small as to amount to, at most, a "mere possibility".

67. The Algerian Ministry of Justice, on behalf of the Government of Algeria, has given detailed and extensive assurances about the treatment of the appellant when extradited. They are appended as an annex to this judgment. It is accepted and obvious that, if fulfilled, they will ensure that the appellant will not be subjected to treatment which if it were to occur in a Convention state would put that state in breach of its obligations under Article 3. For reasons which depend entirely on the analysis contained in the confidential judgment, we are satisfied that the Government of Algeria will fulfil its assurances. They were given in good faith. There is a sound objective basis for believing that they will be fulfilled. As we have demonstrated above, the Algerian authorities already have abundant material upon which to mount a successful prosecution of the appellant. They have no need to resort to improper methods, let alone the use of unlawful force against him, to do so. Breaching their undertaking, by arranging for or even failing to prevent ill-treatment while in custody would make no political sense. It would besmirch Algeria's reputation in the eyes of the world in a high profile case for no purpose. Finally, the publicity which will surround the return and trial of the appellant will ensure that fulfilment of the assurances during that period can be verified. If he is convicted and sentenced to imprisonment, assurance vi (ICRC visits to the places at which he is detained), the vigilance of the Algerian press – demonstrated during and after the February 2008 riots at el Harrach Prison – and of local and international human rights organisations will provide adequate means of verification.

68. We have no reason to depart from SIAC's previous findings about the prison conditions in Algeria: they are imperfect, but improving. Detention of the appellant in an Algerian prison would not put the UK in breach of its obligations to him under Article 3.

Article 6

69. There is no question but that Algerian law provides formally and in detail for the all of the basic requirements of a fair trial, as we demonstrated in *U* 14

May 2007. Professor Filali, in his written reports confirms SIAC's analysis (14/29-83). In summary, the appellant will be tried by a Court, presided over by a senior Judge whose independence and impartiality are formally and practically guaranteed. The case will be determined only on the evidence and arguments presented to the Court. The appellant will be free to choose his own lawyer and to call and question witnesses, subject to certain elementary procedural formalities. Apart from the deliberations of the Court, the proceedings will take place in open Court, to which the public and media will have unrestricted access. Professor Filali is not only an academic lawyer, but has also had twenty years in practice at the Constantine bar. His practice has encompassed a wide variety of cases, including criminal and counter-terrorist cases. In recent years, he has appeared less frequently in Court than before; but he has, throughout his career, exchanged views with colleagues. In his opinion, which we accept, the Judge who tries the appellant's case will fulfil the standards required of him or her by Algerian law.

70. Mr Fransman submits that it is inconceivable that the result of a trial would be the acquittal of the appellant. We accept that it is at least highly unlikely that he would be; but the reason for that conclusion is that there is a compelling case against him to which he has, as yet, given no remotely plausible, let alone convincing, answer.

71. A reasonable means of checking the likely fairness of the appellant's trial is to examine the criticisms made of the trial which took place in 2007 of one hundred and five defendants. Eleven were tried in their absence, and all convicted. Ninety four individuals were present, of whom forty four were convicted and fifty acquitted. All but two of the el Khalifa Bank and Khalifa group "insiders" were convicted (the two who were acquitted were Dellal and Faisal Zerougi). All who participated in the forged mortgages and loan to KRG Pharma were convicted. The majority of those who had participated in depositing money at the bank were acquitted, but a significant number, including many employed by state institutions were convicted. Given the admissions made to the investigating Judge and the documentary evidence against them, it is hardly surprising that the bank insiders and those who participated in the execution of the mortgage deeds and loan to KRG Pharma were convicted. It is not possible to tell from the documents which we have why some of those who caused money to be deposited with the bank were convicted, save that, in the majority of cases, each appears to have accepted an inducement to make the deposit.

72. Dr Hugh Roberts is a long-standing and knowledgeable, if sceptical, observer of Algerian politics and society. We are disinclined to accept his underlying view that much of the explanation for political developments in Algeria in recent times can be attributed to disagreements amongst those who fought the war of independence from 1956 to 1962 and, as we observed in the remitted case of *Y, BB and U* 2 November 2007 we are not willing to accept all of the conspiracy theories which he accepts as plausible. With those caveats, the opinion which he expressed about the trial in the report prepared by him on the instruction of the appellant's solicitors for the purpose of the extradition proceedings is instructive:

> "The Blida trial was not a farce. One might say of it that "the glass was half full" as readily as one might complain that it was half empty. The proceedings were mostly conducted in an orderly and serious fashion under a competent and diligent presiding Judge, and they brought into the public domain and the light of day a great deal of often shocking information about what had been going on. Nonetheless, as Algerian commentators, to look no further, observed in the columns of the Algerian press, the trial left much to be desired and its shortcomings were clearly attributable to the political pressures that had determined the parameters within which the presiding Judge and her colleagues were obliged to conduct the proceeding".

He then gave four examples: (i) "the smearing of the Keramane brothers", (ii) "the witness who was not called", (iii) "the untouchable witnesses", (iv) "the burning of the books".

73. Both Abdelouahab Keramane, the former Governor of the Bank of Algeria and his brother, Abdennour Keramane, a former industry minister fled Algeria before the trial and stated publicly that they feared being made scapegoats for the failure of el Khalifa Bank. There was evidence against them. In the case of Abdelouahab Keramane, it was founded upon the failure by the Bank of Algeria to deal with early breaches of banking regulations by el Khalifa Bank (9/231-2). In the case of his brother and daughter, there was evidence of an attempt by his brother to obtain money from the bank for the benefit of his daughter (9/241-2). Dr Roberts' justified complaint is that the charges against them were leaked to the press before the trial. We have no reason to doubt that that occurred and, if it did so with the complicity with officials of the Accusation Chamber or Criminal Tribunal, it was a serious blot on the administration of justice. But it does not demonstrate that the outcome of the trial was dictated politically. The trial Judge was not put off by political constraints, as Dr Roberts' third example shows. Nor would they inevitably have been convicted, as the different outcomes in the cases of non-insiders suggests.

74. For the reasons explained by Professor Filali, his second example is not a good one. During the course of the trial, a defence lawyer announced that the defence wished to call the Prime Minister at the time that the bank failed, Ahmed Ouyahia. Professor Filali explained that the request was, and was known by those who made it to be, a ploy which was not expected to succeed. Algerian law requires that if the defence require a witness to be called at a trial, they must give notice three days before the start of the trial. The defence did not do so. Accordingly, the trial Judge was entitled to refuse the request. Further, the evidence which the defence wished to adduce was that, as Mr Ouyahia had said to the National Assembly, the Khalifa affair was "the fraud of the century", to establish that the government should have intervened earlier. His evidence could not possibility have benefited the bank insiders or, had he been present, the appellant.

75. Professor Roberts' third example illustrates the only sustained complaint about the conduct of the trial: that some individuals who should have been prosecuted, were not. The prime example was Abdelmadjid Sidi Said, general secretary of the General Union of Algerian Workers, who admitted being personally responsible for the decision of the Caisse Nationale d'Assurance Sociale to deposit 10 billion DA in el Khalifa Bank. He took the decisions without the authority of the Council, but drafted a bogus document purporting to be the text of an authorising resolution of a meeting of the Council. He admitted all of this. The presiding Judge was reported to have stated that she did not understand why his name was not amongst those of the accused. Professor Roberts observes, convincingly, that he was provided with political protection. It is plainly unsatisfactory that someone against whom there was a clear case should not have been prosecuted, for political reasons; but his example does not begin to demonstrate that the Judge's conduct of the trial of those who were accused was unfair. It is no basis for concluding that the trial of the appellant would be unfair.

76. Professor Roberts' fourth example arises from the burning of documents at the Oran branch of el Khalifa Bank in March 2004 on the instructions of the liquidator. He drew the inference that the trial Judge had been "instructed not to pursue this matter". This suggestion was convincingly answered by Mr Lakhdari, in his witness statement in the extradition proceedings: unused documents, such as cash vouchers and cheques in <u>all</u> branches of the bank were burnt in the presence of judicial assistants and a judicial officer, to avoid their illegal use. (3/1131). (The documents which verify his statement are at pages 41-65 of Annex 2 to his statement, in an unnumbered bundle given to us in the course of the hearing). In summary, what Dr Roberts' criticisms show is that the proceedings, taken as a whole, were in some respects unsatisfactory. They do not show that the trial conducted by the Judge was unfair, let alone flagrantly unfair.

77. Accordingly, we are satisfied that there are no substantial grounds for believing that the trial of the appellant will be flagrantly unfair.

Article 5

78. Algerian law and the assurances given by the Algerian Government entirely remove the possibility of arbitrary detention. As Professor Filali explained, the appellant will be detained for a short period pending trial. The dossier has been transferred to the Criminal Tribunal. In accordance with normal practice, his trial should take place, at the latest, in the next session but one after he arrives in Algeria. As the Court convenes a criminal session every three months, his pre-trial detention should not last for more than six months at most.

79. Detention thereafter will depend upon the outcome of the trial. If convicted, he will be sentenced to imprisonment pursuant to a lawful order of a Court. If sentenced to life imprisonment, he will be eligible to apply for conditional release after 15 years. According to Professor Filali, who is likely to know, he is unaware of any prisoner sentenced to life imprisonment who, if still living, has not been released after such a time.

Conclusion

80. For the reasons given, we are satisfied that there are no substantial grounds for believing that there is a real risk, that if extradited to Algeria, the appellant will be subjected to treatment of a kind which would cause the United Kingdom to be in breach of its obligations under the ECHR to him.

Devaseelan

81. This issue arises principally in connection with the confidential judgment, but because it raises a discrete question of law, we address it in the open judgment.

82. Mr Fransman submits that we are bound to treat the findings of the AIT in *SB v SSHD (*AA/05420/2005) as binding on us unless there are good reasons for departing from it. We do not propose to add to an already lengthy judgment by detailed consideration of the jurisprudence which gives rise to this submission. We can deal with it shortly.

83. The AIT upheld SB's appeal against the Secretary of State's refusal of asylum. SB was a lieutenant of the appellant but not an employee or director of el Khalifa Bank. He was one of those to whom Akli said he gave cash for onward transmission to the appellant. He was prosecuted in his absence at the Blida trial and convicted. The AIT was satisfied that there was a reasonable degree of likelihood that the reasons for his prosecution was that he was perceived to have deserted the President's "camp" and sided with the appellant and political opponents of the President. It also held that "it cannot be argued that [SB] will not be at risk of serious harm simply because he is not someone suspected of involvement in terrorist offences", in the absence of diplomatic assurances given by the Government of Algeria.

84. There are good reasons for departing from the findings and reasoning of the AIT in SB, which we summarise as follows:

(i) the AIT made it clear that it was considering only his case.

(ii) the AIT did not consider whether or not SB was excluded from the protection of the Refugee Convention under Article 1(F)(b).

(iii) the AIT did not examine the material which we have analysed which establishes a compelling case that el Khalifa Bank was fraudulently mismanaged by those in charge of it.

(iv) the AIT accepted as true, or at least as likely to have occurred, SB's evidence about a number of incidents in which he said the appellant had been personally involved. They were:

(a) in July 2002 Abdelgani Bouteflika warned the appellant to support the President, with the incentive of being able to run for President himself in 2009, but with the threat of a purge if he did not support him.

(b) in September 2002 Abdelgani Bouteflika expressed concerns to the appellant about his intention to set up satellite television channels, to which the appellant replied that he would take responsibility and there would be no trouble.

(c) in October 2002 two broadcasts, about the events of October 1988 and the visit of the Prime Minister in October 2002 to France created the serious possibility that the President and his supporters believed that the appellant had failed to keep his promises to ensure that no trouble to the Presidency would arise from the broadcasts.

(d) on 24 February 2003, Abdelgani Bouteflika proposed to the appellant that the Government of Algeria should take over the Khalifa group.

(e) in April 2003 in Paris Abdelgani Bouteflika offered SB a deal to get the appellant to return to Algeria, but he (the appellant) was not prepared to do so.

(1/340-341).

In his asylum statement dated 25 May 2007 the appellant did not mention any of these alleged incidents (13/19-51). Like all rules of practice, the rule in Devaseelan is intended to serve the interests of justice, not to frustrate them. SB has not been willing to give evidence in this appeal. Accordingly, we have no means of assessing the truthfulness of his evidence other than to compare it with the material which we have considered. That satisfied us that, in relation to the issues which directly affect the appellant, his evidence was not true. We do not regard ourselves as compelled by the rule in Devaseelan to reach conclusions of fact which we are convinced would be wrong.

(v) the appellant did not give evidence at SB's hearing. Nor were any statements by him produced. In consequence, the AIT had no opportunity to assess the poor quality of that evidence.

(vi) as the AIT observed, no assurances were sought or given by the Algerian Government in respect of SB's return.

(vii) the AIT does not refer anywhere in its judgment to the evidence upon which it based its conclusion that it could not be argued that SB would not be at risk of serious harm because he was not suspected of involvement in terrorist offences. The same solicitors represented SB as represent this appellant. If there were such evidence, we would have expected it to have been deployed in this appeal. Its absence suggests to us that this conclusion was ill-founded.

(viii) if required to treat the findings in SB as binding, we would have to adopt a similar approach to the findings of District Judge Workman, which included findings that extradition was not barred by extraneous considerations and was compatible with this appellant's ECHR rights.

Outcome

85. This appeal is dismissed.