Neutral Citation Number: [2012] EWHC 617 (Admin)

Case No: CO/4027/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

16/03/2012

B e f o r e :

LORD JUSTICE STANLEY BURNTON
MR JUSTICE UNDERHILL

Between:

LORD CARLILE OF BERRIEW CBE QC AND OTHERS
AND MARYAM RAJAVI

Claimants

and –

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Claire Montgomery QC & Raza Husain QC (instructed by Mishcon de Reya) for the Claimants
James Eadie QC and Robert Palmer (instructed by the Treasury Solicitor) for the Defendant
Hearing date: 23rd February 2012

HTML VERSION OF JUDGMENT

Lord Justice Stanley Burnton :

Introduction

1. The original Claimants in these proceedings are 16 eminent cross-party members of the House of **Lords** and the House of Commons who have invited Mrs **Maryam Rajavi**, an eminent dissident Iranian politician, resident in Paris, to meet with them in the Palace of Westminster to discuss, at an invitation only event, democracy, respect for human rights and other policy issues relating to Iran. Mrs **Rajavi** has been added to the claim as Seventeenth Claimant. Their wish to meet in Westminster, indeed in this country, has been thwarted as a result of the

Secretary of **State**'s decisions to exclude Mrs **Rajavi** from the UK. The **Secretary** of **State** claims that Mrs **Rajavi**'s exclusion is conducive to the public good.

2. In these proceedings the Claimants contend that the **Secretary** of **State**'s exclusion of Mrs **Rajavi** is unlawful, as an unjustified and perverse infringement of their common law and Convention right of free expression, rights that are all the more important and precious where those involved are members of the legislature.

The facts: (a) the context

3. This case is unusual, perhaps unique. Unlike in other cases of exclusion, the **Secretary** of **State** has no quarrel whatsoever with Mrs **Rajavi**'s views nor with what she may or may not say whilst here. Her democratic credentials are not in dispute. She is recognised internationally as an expert on Iranian political affairs and the position of women in Islam. She has visited the UK on four occasions, without any consequences to British interests, is widely travelled and welcomed across many European **states**. She has visited the European Parliament more than a dozen times, most recently in February 2012.

4. The case is rendered all the more unusual by the poor **state** of relations between this country and Iran. In November last year the Government severed all financial ties with Iran. There were press reports of the possibility of military action in Iran. Following the attack on the British Embassy in Tehran, which seemed to have been officially sponsored, the Government withdrew all British Embassy staff from Tehran and closed the Iranian Embassy in London, leaving diplomatic relations at the "lowest possible level".

5. It appears that this country is the only member **state** of the European Union from which Mrs **Rajavi** is excluded. The basis of exclusion is the Foreign and Commonwealth Office's apprehension or fear of unlawful reprisals by the government of Iran if her exclusion is lifted and she addresses a meeting in the Palace of Westminster. The Parliamentary Claimants regard the **Secretary** of **State**'s decision as the appeasement of an undemocratic regime in the face of apprehended threats of unlawful action. Their challenge has attracted the support of 180 of the most senior MPs and peers, including former party leaders, Ministers and **Secretaries** of **State**, with expertise in both foreign policy and security matters. **Lord Carlile**, the first named Claimant, considers the **Secretary** of **State**'s decision to be an "affront to Parliament".

(b) Mrs Rajavi

6. Mrs **Rajavi** was originally excluded from the United Kingdom in 1997 on the grounds of her leadership of a terrorist organisation. She was and remains the de facto leader of the People's Mojahedin Organisation of Iran (PMOI), which is widely and correctly known by the Farsi name 'Mujahedin-e Khalq' (MeK) or 'Mujahedin-e Khalq Organisation' (MKO). I shall refer to it as the MeK. Mrs **Rajavi** had become co-Chair with her husband, Masoud **Rajavi**, in 1985. She was **Secretary**-General of the MeK from 1989 to 1993. She has also been "President-elect" of the National Council for the Resistance of Iran (NCRI) since 1993. The NCRI was founded as a movement broader than the MeK, but became and remains dominated by the MeK. Some observers, including for example the US Government, treat the two as aliases.

7. From the early 1980s until 2001 or 2002, the MeK carried out violent activities directed against Iran, from 1986 principally from their base in Iraq 60 miles north of Baghdad (Camp Ashraf). The group had participated in the 1979 Islamic Revolution that replaced the Shah with a Shiite Islamist regime led by Ayatollah Khomeini. However, the MeK's ideology, described by the US **State** Department Country Report on Terrorism 2010 as "a blend of Marxism, feminism, and

Islamism", was at odds with the post-revolutionary government and most of its original leadership was soon executed by the Khomeini regime. In 1981, its leadership and some members fled Iran. The leadership resettled in Paris, where they began supporting Iraq in its war against Iran. In 1986, after France recognized the Iranian regime, the MeK moved its headquarters to Iraq. This facilitated its terrorist activities in Iran. The activities of MeK led it to become a proscribed organisation in the United Kingdom on 29 March 2001, under the Terrorism Act 2000.

8. On 30 November 2007, the Proscribed Organisation Appeals Commission (POAC) allowed an appeal brought by **Lord** Alton of Liverpool and others against the **Secretary** of **State**'s refusal to de-proscribe the MeK. POAC found that the MeK had been a terrorist organisation. At paragraph 164 of its open determination, it stated:

> "We have reached the clear conclusion that the **Secretary** of **State** had reasonable grounds for believing that the PMOI was responsible for the attacks listed and, more importantly, to conclude that the PMOI had carried out many attacks over an extended period of time and that the examples set out in Mr Fender's witness statement demonstrated the range and severity of the terrorist activities in which the PMOI had historically been involved."

9. However, POAC found that there had been a significant change in the MeK's activities dating from June 2001 onwards, and that the MeK could no longer be said to be concerned with terrorism within the meaning of section 3 of the Terrorism Act.

10. Mrs **Rajavi** is described by Mr Alejo Vidal-Quadras, a Vice-President of the European Parliament, as "the leading expert on Iranian affairs". She is a powerful advocate for a democratic non-sectarian government for Iran: hence the undoubted hostility to her of the present Iranian government. Mr Vidal-Quadras says of her that "She represents the rights of the oppressed in Iran, from women and students, to ethnic and religious minorities. Moreover, her modern and progressive interpretation of Islam is an important and necessary example to others. …. I found Mrs **Rajavi** to be a true believer of gender equality and freedom of thought and religion, committed to the rule of law and a very responsible leader. She has done much to promote religious tolerance. …" He gives the dates of Mrs **Rajavi**'s dozen meetings at the European Parliament, and comments as follows:

> "13. Every time she had visited the European Parliament she has addressed various meetings including official meetings of Parliamentary groups, as well as many private meetings with heads of parliamentary groups, committee chairs, women's groups and other individual members interested in foreign policy, human rights and global peace and security. If Mrs **Rajavi** was restricted from visiting the European Parliament, she would have had the opportunity to meet with a handful of MEPs who travelled to Paris to see her, whereas by having the opportunity to visit the European Parliament, she has had the opportunity to meet and engage with hundreds of MEPs.
>
> 14. MEPs always take advantage of her presence at the European Parliament to actively participate in her meetings to learn about all sorts of issues regarding the situation in Iran, the **state** of the regime and policy towards it, and advances made by the Iranian opposition. Participants normally include a number of Vice Presidents of the European Parliament and leaders of parliamentary groups and committees. Face to face meetings allow MEPs and their advisers to question Mrs **Rajavi** and spend time with her addressing a range of sensitive issues. They could not possibly do this through other means of long distance communication. At a conference on the occasion of International Women's Day at the European Parliament dozens of female MEPs attended including female Vice President of the Parliament and a large number of members of EP committee on women."

(c) The Secretary of State's decisions

11. The decisions of the **Secretary** of **State** that are the subject of these proceedings were dated 1 February 2011, 10 October 2011 and 24 January 2012: i.e., they postdate the de-proscription of the PMOI. Each of these decisions was made by the Home **Secretary** personally, although clearly they were made on the advice of the Foreign and Commonwealth Office. The decision of 1 February 2011 was unreasoned: the **Secretary** of **State** simply stated that she did not consider Mrs **Rajavi**'s presence in the UK to be conducive to the public good. The decision of 10 October 2011, on the other hand, was fully reasoned. It was made after the bringing of these proceedings, and after consideration by the **Secretary** of **State** of the Claimants' evidence. It is worth setting out the reasons given by the **Secretary** of **State**:

> "Mrs **Rajavi** is the de facto leader of the Mojahedin-e-Khalq (MeK), which is also known as the People's Mojahedin Organisation of Iran (PMOI). This organisation advocates the overthrow of the current regime in Iran and remains illegal in that country. Lifting Mrs **Rajavi**'s exclusion would cause damage to the UK interests in relation to Iran and endanger the security, wellbeing and properties of British officials overseas. The reasons for that conclusion include the following:
>
> - Whilst it is accepted that the MeK was de-proscribed by the UK in 2008 on the basis that it could not reasonably be believed to have continued to be concerned in terrorism since June 2001, the organisation's historical activities and Mrs **Rajavi**'s past role in them as de facto leader cannot be ignored. It is widely recognised that the MeK was actively concerned in terrorist activities between the 1970s and 2001. Acts committed by the MeK during this period include attacks on Western interests. It is against this background that Mrs **Rajavi** was excluded from the UK in 1997, following her move to Iran from where she had urged the MeK to 'liberate' Iran, at a time when the MeK had continued to mount terrorist attacks there. The MeK's history of terrorist violence until June 2001 and involvement in the Iran/Iraq war, where it was fighting with Iraqi forces against Iran, continues to resonate today. It has resulted in there being little support for the group among the general population in Iran, including anti-regime organisations, demonstrators and oppositionists. The FCO does not agree with **Lord Carlile**'s own assessment that Mrs **Rajavi** 'leads the movement for democratic change in Iran' (paragraph 22 of his witness statement). It assesses that the MeK is not a credible opposition group in Iran. The well-known Iranian opposition, the Green Movement, for example, has publicly distanced itself from any involvement in it.
> - The UK has diplomatic relations with Iran. There is a British Embassy in Tehran and an Iranian Embassy in London. The UK has a strong interest in working with Iran on major policy issues including nuclear counter-proliferation, wider issues in the Middle East and human rights. Cooperation between both countries on issues of mutual importance include reciprocal visa services (both diplomatic and public), consular services and cultural/educational exchanges.
> - However, UK interests are affected by difficulties in UK-Iran bilateral relations. The Iranian regime perceives that negative intent lies behind the UK government's actions and statements. Any attempt at positive engagement by the UK is viewed with scepticism. Anti-UK rhetoric by the Iranian authorities is frequent and both the President and the Iranian Parliament are particularly vocal in expressing their condemnation of the UK on a range of matters. This includes the perception that the UK is supportive of anti-Iranian extremist activities, including the sort historically carried out by the MeK. The 2008 de-proscription of the MeK led to serious political protests from the Iranian authorities and demonstrations outside the British Embassy in Tehran, particularly as the MeK

remains proscribed in Iran. The Iranian authorities believe that the de-proscription of the MeK in the UK was politically motivated, notwithstanding attempts to explain otherwise.

- Similarly the lifting of Mrs **Rajavi**'s exclusion would also be seen by the Iranians as a deliberate political move against Iran, and, it is assessed, would have a wide-ranging negative impact on UK interests and day-to-day relations, as well as on the major policy issues such as nuclear counter-proliferation, human rights and wider issues in the Middle East. It may also result in accusations, however unjustified, of double standards in respect of the condemnation of terrorism. Any deterioration in relations would also be likely to impact on FCO efforts to replace their Ambassador to Tehran and an Iranian Ambassador in London. In short, it is assessed that lifting the exclusion would cause significant damage to the UK's interests in relation to Iran and the UK's ability to engage with Iran on wider and crucial objectives.
- Whilst Mrs **Rajavi** is able to travel to other European Countries (in particular by virtue of the fact that she is resident in France) the particular nature of the UK-Iran bilateral relationship is such that a particularly strong reaction is expected if her exclusion is lifted. The presence of a British Embassy in Tehran means that staff there are particularly vulnerable to anti-Western sentiment in general and anti-UK sentiment in particular. There is substantial concern that if bilateral relations were to deteriorate as a consequence of the lifting of the exclusion order, there could be reprisals that put British nationals at risk and make further consular cooperation even more problematic. Historically, the Iranian regime has actively targeted the British Embassy and staff members in Tehran. Even when tensions periodically ease, the UK based staff members' access to Iranian officials and information from the authorities has been difficult. Demonstrations outside the Embassy have included damage to property, invasion of compounds and restriction of staff movement due to the fears for personal safety. There have also been cases where British nationals have been held in detention for long periods, often on spurious charges and sometimes without consular access being granted. As Iran moves into a period of electoral activity once again, the Iranian regime is likely to direct accusations at the UK should there be any instability and a ramping up of rhetoric may also provoke an uncontrolled public reaction.
- When weighed against the serious potential effects of lifting the exclusion on the UK's interests in relation to Iran, the **Secretary** of **State** has concluded that the damage to the public interest significantly outweighs any interference with Mrs **Rajavi**'s ability to express her views as President-elect of the NCRI and with the Parliamentarians' ability to meet her in person in London, particularly in view of the fact that Mrs **Rajavi** has many alternative means at her disposal for achieving these aims (e.g. meeting in France or a third country, or contact by video-link or other media).
- In light of all the available evidence, the **Secretary** of **State** has decided that Mrs **Rajavi**'s continued exclusion from the UK is justified on foreign policy grounds and is proportionate to any limited interference with the Claimant's rights of freedom of expression under Article 10 of the ECHR.
- The **Secretary** of **State** has also taken account of the claimed interference with the Claimant's rights under Article 9 of the ECHR, but does not consider that the exclusion of Mrs **Rajavi** can be said to amount to any interference with those rights, or (even if it did) that any such interference would be disproportionate.
- The **Secretary** of **State** has also noted that Mrs **Rajavi**'s claim that Article 8 is engaged, notwithstanding that she also has no private or family life in the United Kingdom, by virtue of the effect of the exclusion on her reputation. The **Secretary** of **State** does not accept that the effect of the continuance of the exclusion of Mrs **Rajavi** on her reputation represents

an interference with her right to respect for family life, or (even if it did) that any such interference would be disproportionate.

In light of all the available evidence, the **Secretary** of **State** has decided that Mrs **Rajavi**'s exclusion from the UK must be maintained, is justified on foreign policy grounds and is proportionate to any limited interference with either her right of freedom of expression, or that of the Parliamentarians."

12. The **Secretary** of **State**'s decision of 24 January 2012 was taken following the sacking of the British Embassy in November 2011 and the submission of amended grounds of judicial review and further evidence by the Claimants. Again, it is appropriate to set out the reasons given by the **Secretary** of **State** for maintaining the exclusion of Mrs **Rajavi**:
    - The lifting of Mrs **Rajavi**'s exclusion would be interpreted in Iran by both the regime and the people as a demonstration of UK support for what continues to be perceived as a terrorist organisation hostile to Iran (the MeK remains an illegal organisation in Iran).
    - Iran continues to regard Mrs Rejavi as the leader of a terrorist organisation and often cites the POAC judgment, which removed the MeK from the UK's list of proscribed organisations, as evidence of UK support for terrorism.
    - The complicity of the Iranian regime in the invasion of both UK diplomatic compounds in Tehran on 29 November 2011 clearly demonstrated that the UK is the prime target in Iran for anti-Western sentiment in the absence of US and Israeli embassies (a view which would be supported by almost any impartial academic or commentator).
    - Following the events of 29th November 2011, the lifting of Mrs **Rajavi**'s exclusion from the UK could also be perceived by Iran as a purposeful political response to the 29 November attack on our Embassy, increasing the likelihood of an adverse Iranian response.
    - The case for exclusion is not based purely on foreign policy grounds but also on grounds of UK security, especially the safety of HMG staff in Iran (there remain over one hundred local employees in Iran) the protection of UK assets that remain in Iran, and the security of UK personnel in the region. The assessment of risk has increased since the 29 November attack as Iran has demonstrated that it is prepared to sanction actions that breach international law.
    - The Iranian regime would seek to respond to the lifting of the exclusion either by targeting our interests in Tehran, putting our local staff at risk, and/or the potential shift of risk to British Interests and properties outside Iran which could now bear the brunt of any retaliatory action against the UK, both within and outside the region.

    Having carefully considered all the available evidence, the **Secretary** of **State** has decided that the decision of 25 August 2011 to maintain Mrs **Rajavi**'s exclusion from the UK must be maintained and defended as it is justified on grounds including concerns about the welfare of British personnel and interests overseas and is proportionate to any limited interference with either her own or the relevant Parliamentarians' human rights or right to freedom of expression.

13. The decision of 24 January 2012 was the subject of the witness statement of Ken O'Flaherty, a senior civil servant of the Foreign and Commonwealth Office, of the same date. He said:

    "4. As the court will no doubt be aware, UK diplomatic relations with Iran have deteriorated significantly since my last witness statement. On 27 November, the Majles (Iranian Parliament) voted to expel our newly arrived Ambassador, Dominick Chilcott,

citing both the UK's history of hostile policies towards Iran including its support for terrorism (i.e. the UK's deproscription of the MeK) and the announcement on 21 November 2011 that together with a strengthening of sanctions against Iran by Canada and the UK, the UK would sever all financial ties with Iran.

5. The following week, on the afternoon of the 29 November 2011, a planned demonstration outside the British Embassy Tehran to mark the first anniversary of the assassination of an Iranian nuclear scientist (for which the UK is blamed by Iran together with the US and Israel), resulted in approximately two hundred regime-backed Basijj paramilitaries invading both our diplomatic compounds, including our residential compound to the north of Tehran. They set light to the Embassy building and ransacked and looted all our properties in an attack that went on for nearly six hours, with Police acquiescence. All British diplomatic staff left Iran shortly after this incident for their own safety and given the Iranian authorities failure to protect the safety of our staff and diplomatic property, the Foreign **Secretary** ordered that the Iranian Embassy in London be closed and all Iranian diplomats were told to leave the UK within 48 hours. Diplomatic relations were reduced at this point to the lowest possible level, short of severing them completely.

6. Taking into account this change in the UK's relationship with Iran, the FCO reassessed its arguments with regard to **Maryam Rajavi**'s current exclusion from the UK since my last written statement to the Court. The FCO has concluded that it is right to maintain our view that to lift the exclusion on Mrs **Rajavi** would damage existing UK interests in relation to Iran. Specifically, it would endanger the security of the Locally Engaged members of staff still employed by the British Embassy Tehran (over one hundred including our guard force), who for years have suffered severe harassment from the Iranian authorities (including the arrest in 2009 of nine members of local staff falsely accused of instigating and fuelling, on behalf of the British Government, protests after the disputed Presidential election). They continue to carry out essential work for us, such as repairs to the damage caused by the invasion of our compounds. Additionally, it could jeopardise remaining British Embassy property and assets in Iran. We are also mindful of the potential risk to British interests outside Iran, especially in the region, which could now become the target of choice for any retaliatory action against the UK. Following the attack on our Embassy, and while our assets in Tehran remain at risk, we attach greater weight now to this threat. The regime has also threatened – most recently the Head of the Judiciary, Sadeq Larijani, on 18 January – an increase in terrorism in the West in retaliation for acts and provocations, including the assassination of nuclear scientists.

7. In many ways our assessment of the risk to our interest is greater following the attack on the 29 November. The regime has now shown that it is prepared to sanction actions against us that breach international law. This is extremely serious, when combined with the Iranian regime's instinct to respond forcefully, gives further weight to our argument that there would be a risk of retaliation for any decision to allow Mrs **Rajavi** access to the UK.

8. Moreover, following the events of 29 November we are in a very delicate stage of the bilateral relationship where any move by either side could appear calculated. It is likely that a move to allow **Rajavi** into the UK at this time would be interpreted by the Iranian regime as a further targeted measure, increasing the likelihood of an Iranian response.

9. Whilst we have had to accept risk to our Embassy and wider interests for policy actions deemed essential to our top priority foreign policy objectives, we continue to assess that there is little to be gained from engagement with a group that has little to no constituency of support in Iran, whilst the risks of lifting the exclusion are clear. "

He continued:

> "In my previous statement, I referred to the risks to the British Embassy Tehran, our staff, properties and assets. Unfortunately, our assessment of the credibility of this threat was borne out by the events of 29 November 2011, which show that Iran is prepared to act against the UK in contravention of international law on diplomatic relations. Additionally, my original list of UK interests, namely the safety of personnel and property at the British Embassy in Tehran, nuclear negotiations, consular obligations, human rights and access to officials remains valid, notwithstanding the absence of British diplomats in Tehran. Our concerns are therefore wider than foreign policy alone (as described by Baroness Boothroyd and Anne-Marie Lizin in their statements) and include, for example, UK security interests."

14. The reasons given, and the evidence filed, by the **Secretary** of **State** are criticised by the Claimants. They contend that the concerns of the **Secretary** of **State** are at best exaggerated, and are not justified either by history or by the experience of those European **states** who have welcomed Mrs **Rajavi**. For example, there was no significant Iranian government reaction to the de-proscription of the PMOI. According to the witness statement of **Lord** Waddington, a former Home **Secretary**, contrary to the impression given by the evidence adduced by the Home **Secretary**, there were no more than some negative remarks by Iranian officials, with no threats, and a non-violent demonstration by a few dozen people, mainly women, bizarrely described by Iranian media as relatives of PMOI members. The security, well-being and properties of British officials were not endangered following either Mrs **Rajavi**'s earlier visits to this country or the de-proscription of PMOI. **Lord** Triesman, a former Parliamentary Under **Secretary** of **State** at the FCO and now a Shadow Foreign Office Minister, in his witness statement **states**:

> "4. It became clear as a result of the POAC and Court of Appeal judgments that in fact the information and intelligence we had on the PMOI was wrong. I admitted this to **Lord** Corbett and others after those judgments were released. I cannot recall at any time being provided with information suggesting the PMOI was then involved in any act of violence or having the capability or the intent to do so. The advice provided to us at the time was that the PMOI's proscription should continue mainly for foreign policy reasons, specifically concern about an adverse reaction from the Iranian government and the anticipated consequences of such reaction. We were also advised by officials in the Foreign Office that the organisation did not have much support within Iran, although this appeared to be inconsistent with the Iranian regime's rooted determination to restrain the activities of the NCRI and PMOI in Iran and elsewhere and to exile, imprison or execute its supporters.
>
> …
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> 7. It is important to note that the fear and concern expressed by Foreign Office officials that the PMOI's deproscription would lead to strong reaction from Iran, which might endanger our interests or endanger the safety of our embassy staff in Iran, never in fact materialised. Of course, the Iranian regime complained about the Court rulings, but that was to be expected. In my view, the deproscription experience showed that if we stand firm on our values and the rule of law, the Iranian regime will understand that its complaints will not get it anywhere. We have tried rapprochement with Iran and it has failed. What we need now is firmness to serve our interests and our values, which of course include upholding the rule of law and respect for individuals' rights. I believe that same is true about Mrs **Rajavi**'s visit to the UK. The exclusion is counter-productive even from a foreign policy perspective, because the message it sends to dictatorial regimes is that if they threaten us we will give in to their demands. It is this not only intrinsically wrong, but also wrong in terms of consequences to adopt a policy of

appeasement in the face of unlawful threats. It sets a dangerous precedent, which could seriously put at risk our personnel around the world. "

15. Mr Struan Stevenson MEP refers to newspaper reports that the UK was stepping up planning for possible involvement in military attacks on Iran's nuclear sites. He continues:

> "17. In circumstances where the UK is responsible for the imposition of an array of wide ranging sanctions against the Iranian regime and is said to be preparing for possible military attacks on Iran's nuclear sites, it is simply incredible and irrational to maintain that a short visit by Mrs **Rajavi** to London could impact on the nuclear issue. This is simply an assessment by Mr O'Flaherty, which is not supported by evidence and is contradicted by the current **state** of affairs. As Mr O'Flaherty accepts, there are no nuclear negotiations with Iran for them to be affected by such a visit. Instead, this assessment stems from a policy of appeasement of a brutal dictatorship that is recognised as the most serious threat to peace and stability. The assessment is based on a policy that assumes cowing to the demands of such a regime and giving it concessions will safeguard UK interests. It is the same policy that has determined it wise to spend 10 years supposedly '*negotiating*' with the Iranian regime over its nuclear programme, which has achieved nothing other than to buy the Iranian regime time and leave us on the verge of having to deal with a nuclear Iran."

The contentions of the parties

16. For the Claimants, the principal submissions were as follows:

(1) The **Secretary** of **State** was in the circumstances of this case under a duty to consult the Claimants before making her decisions. She had failed to do so.

(2) In making a decision that in effect surrendered to the fear of unlawful action by the Iranian government, the **Secretary** of **State** had failed to give due weight to the importance of the maintenance of the Rule of Law, in the absence of clear evidence justifying the apprehensions relied upon.

(3) The **Secretary** of **State** had failed to engage with the Convention rights that are engaged, in particular the Article 10 right to free expression, but also Mrs **Rajavi**'s Article 8 rights, and had failed to consider that the test for their infringement was one of necessity.

(4) The **Secretary** of **State** had not appreciated the importance of the Article 10 rights engaged, in particular the fact that they were the rights of Parliamentarians seeking to exercise their responsibilities as such.

17. For the **Secretary** of **State**, the principal submissions were as follows:

(1) She accepted that the original Claimants' Article 10 rights were engaged. However, Mrs **Rajavi** was not prevented from addressing Parliamentarians by her exclusion. A video link could be set up, enabling her to address them and for them to be able to ask questions of her. Parliamentarians could also meet her in Paris. Thus the interference with Article 10 rights is limited.

(2) Whether the matters relied upon by the **Secretary** of **State** justified the continued exclusion of Mrs **Rajavi** was very much a matter of judgment, of assessment of information and advice from a variety of sources to which the Court did not have access. The context is

foreign relations and foreign policy, areas in which the Courts pay particular regard to the expertise, experience and knowledge of the executive branch of government.

(3) There was no duty to consult in the present case. In any event, the **Secretary** of **State** had considered all of the evidence and representations put forward by and on behalf of the Claimants, and had maintained her decision to exclude Mrs **Rajavi**. The complaint of lack of consultation was now academic.

The authorities

18. The statutory framework is relatively complex, as is the way in all things to do with immigration. For present purposes it is sufficient to note that in the circumstances of this case, where the decision has been made by the **Secretary** of **State** personally and excludes a person on the ground that the decision is in the interests of the relationship between the UK and another country, if Mrs **Rajavi** had applied for leave to enter (which she has not), it would have been refused, and she would have a right of appeal to the Special Immigration Appeals Commission under section 2 of the Special Immigration Appeals Commission Act 2007. SIAC would of course in specified circumstances be able to receive evidence in closed session. There is no provision for evidence to be so received in ordinary judicial review proceedings. However, the **Secretary** of **State** has not suggested that this Court should decide the present claim otherwise than on the basis of the open evidence that has been adduced, without any assumption as to what closed evidence might otherwise be available.

19. I accept the **Secretary** of **State**'s submission that the Claimants cannot succeed on the ground of lack of consultation. The **Secretary** of **State** has considered all that could have been said if she had consulted originally, and made a fresh decision, or maintained her decision to exclude Mrs **Rajavi**. To quash the decision for it to be retaken after an opportunity for consultation would be pointless.

20. It is difficult to see that any relevant Article 8 right of Mrs **Rajavi** is engaged, since she is not in this country and has no private life here. In any event, if the interference with the Article 10 right is justified, it is impossible to think that it would not be under Article 8.2.

21. The original decision of the **Secretary** of **State** was effectively unreasoned. That cannot be said of the decision of 24 January 2012. The **Secretary** of **State** purported to take into account the Claimants' Convention rights. The importance of the maintenance of the Rule of Law, in international as well as national affairs, was not expressly mentioned, but it is an obvious consideration where what is feared is unlawful conduct by a foreign **state**. So I think that the **Secretary** of **State**'s decisions must be considered on substantial, rather than procedural, grounds. In my judgment, the Claimants' substantial ground for judicial review is that their Article 10 rights have been infringed.

22. Despite the Under-**Secretary** of **State**, Alistair Burt MP, having stated in the House of Commons on 26 April 2011 that, notwithstanding the decision of POAC and the Court of Appeal to which I have referred, he "[stood] by the Foreign Office's belief that the PMOI's background, history and present activities require it to remain proscribed" the Claimants expressly disclaimed any allegation that the **Secretary** of **State**'s decisions were affected by unsustainable or incorrect factual assumptions.

23. Article 10 of the European Convention on Human Rights is as follows:

> "1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by

public authority and regardless of frontiers. This article shall not prevent **States** from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

24. The Claimants have not submitted that the matters relied upon by the **Secretary** of **State** are not within the matters referred to in paragraph 2 that may justify a restriction on freedom of expression. The relevant interests would seem to be national security, public safety, and the protection of the rights of others, including in particular the local employees of the Embassy in Tehran. The Claimants have emphasised the requirement that the restriction on freedom of expression must be, and must be shown to be, necessary in a democratic society.

25. Article 10 expressly protects the right to receive and impart information and ideas. It follows that quite apart from any right of Mrs **Rajavi** to communicate with the Parliamentarians, their right to hear from her is engaged and has been restricted.

26. The right of free expression, protected at common law, by the Convention, and thus by the Human Rights Act 1998, is a crucial, precious and important right in any democracy. The first act of the tyrant is to suppress free speech. As I indicated at the beginning of this judgment, the rights engaged in this case are all the more important and precious since they involve the rights of members of our legislature to receive information and opinion from an authoritative source on subjects of national and international importance.

27. The **Secretary** of **State** contends that the restriction is a minor one, because Mrs **Rajavi** could speak to the Parliamentarians, and they could speak to her, via a video link to Paris. I do not agree. In the first place, it would not be easy to find a video link facility that could accommodate sensibly the number of Parliamentarians who may wish to attend a meeting. The wide support given to these proceedings suggests that more than a hundred may wish to be present. I understand that there is no suitable room with a video facility for such a number in the Palace of Westminster. Secondly, a meeting in person has more impact than communication via video link, as Mr Vidal-Quadras has confirmed. Thirdly, there is an important symbolic value in a meeting between Mrs **Rajavi**, an important advocate for democratic rights for Iran, and Parliamentarians in the Palace of Westminster, the home of the Mother of Parliaments. I am reminded of what was said in *Tabernacle* ***v Secretary*** *of* ***State*** *for the Home Department* [2009] EWCA Civ 23, a case that concerned the right of the Aldermaston Women's Peace Camp to hold a protest camp in the vicinity of the Atomic Weapons Establishment at Aldermaston. It was argued by the **Secretary** of **State** that the women's right of free expression was not infringed, or only infringed in a minor respect, by a byelaw that prevented their holding their protest camp. In a judgment with which the other members of the Court agreed, **Lord** Justice Laws said:

"36. As I have said it is plain in this case that the **Secretary** of **State** has not sought to impose anything approaching a blanket ban on AWPC's rights of protest. They may protest as much as they like: all they are stopped from doing is camping in the Controlled Areas. In that sense it may be said that paragraph 7(2)(f) of the 2007 Byelaws only goes to the manner and form of the exercise of the appellant's rights under ECHR Article 10. It is not on its face directed towards the suppression of free speech, on the part of the AWPC or anyone else. It merely prohibits camping, which happens to be the mode or setting chosen by the AWPC for its protest. …

> 37. But this "manner and form" may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protesters' message; it may be the very witness of their beliefs. … the camp has borne consistent, long-standing, and peaceful witness to the convictions of the women who have belonged to it. To them, and (it may fairly be assumed) to many who support them, and indeed to others who disapprove and oppose them, the "manner and form" is the protest itself.
>
> 38. In my judgment, therefore, the fact that the camp can be categorised as the mode not the essence of the protest carries little weight."

This part of the judgment of Laws LJ was recently referred to with approval in *The Mayor etc of London* **v** *Samede* [2012] EWCA Civ 160 at paragraph 27.

28. Where the right of free expression engaged is that of Parliamentarians, both at common law and under the Convention the justification for any restriction must be demonstrated to be particularly strong.

29. The approach of the Court to an exclusion that engages rights under Article 10 was recently considered by this Court in *Naik* **v Secretary** *of* **State** *for the Home Department* [2011] EWCA Civ 1546. Gross LJ, in a judgment with which Jackson LJ agreed, set out the applicable principles in a comprehensive series of propositions, and I think it would be wrong of me, and a work of supererogation, to seek to reformulate them. He said:

> "83. *(1) Principle and authority:* As it seems to me, the legal framework for determining this issue is furnished by the principles or propositions which follow.
>
> 84. *First,* the **State** has the right to control the entry of non-nationals into its territory. This is hornbook law and requires no elaboration.
>
> 85. *Secondly,* where immigration control overlaps with or results in the engagement of Art. 10 rights of freedom of expression (as it does or as must be assumed here), such control must be exercised consistently with the **State**'s Convention obligations.
>
> > i) To the extent that authority is needed, this proposition enjoys the support of *Farrakhan* [2002] EWCA Civ 606 [2002] QB 1391, at [35] and [52] – [56]; whatever the doubts as to the status of *Farrakhan* as a precedent on the question of *whether* Art. 10 is engaged in the case of an alien outside the country, I do not think that such doubts weaken the authority of *Farrakhan* where Art. 10 is (or is assumed to be) engaged.
> >
> > ii) Mr. Husain QC, for Dr Naik, contended vigorously that this was not an immigration case at all. I respectfully disagree. To begin with, I prefer to focus on the substance of the matter, rather than the label to be attached to the case. More than that, this is undoubtedly an 'immigration case', at least in the sense that the SSHD was required to consider whether Dr Naik, a non-national, should be permitted entry into this country. The true analysis is that this is an immigration case but one where the exercise of immigration control overlaps with or results in the engagement of Art. 10 rights of freedom of expression. The task for the SSHD and the Courts – in their different spheres – is to consider both these important public interests.
>
> 86. *Thirdly,* Art. 10 rights of freedom of expression are of the first importance. These rights are not, however, absolute or unqualified, as Art 10.2 makes clear. The importance

of rights of freedom of expression in a democracy requires no reiteration here. Likewise, the wording of Art. 10.2 speaks for itself.

87. *Fourthly,* resolution of any tension between the important interests of immigration control and freedom of expression is achieved by way of Art. 10.2. The application of the provisions of Art. 10.2 will determine whether or not the interference with freedom of expression is justified. The exceptions contained in Art. 10.2 must be construed strictly and the need for any restrictions must be convincingly established. This approach to the construction of Art. 10 is justified both by the structure of the Article and its context; it is moreover well-established in English authority and finds an echo in the Strasbourg jurisprudence cited to us: see, for example, *Surek* ***v*** *Turkey* (1999) 7 BHRC 339, at [57] *et seq.;* Cox ***v*** *Turkey* [2010] Imm AR 4, at [38] – [40]. Manifestly too, freedom of expression, if it is to have meaning, cannot be confined to those expressing palatable views; a degree of robustness is a healthy attribute of a democratic society.

88. *Fifthly,* decisions of the SSHD to refuse entry to this country to an alien on national security or public order grounds are entitled to great weight and must, by their nature, enjoy a wide margin of appreciation (or discretion). Let it be accepted that such decisions, when resulting in the engagement of Art. 10, warrant the most careful scrutiny on the part of the Court; crucially, even so, the decision-maker is the SSHD not the Court. As Carnwath LJ expressed it (at [62] above), the Court is not substituting its own view for that of the SSHD. The Court's task remains one of review. By way of elaboration:

> i) The starting point is that the SSHD's decisions in this area are entitled to 'great weight', to adopt, with respect, **Lord** Bingham's wording in *A* ***v*** ***Secretary*** *of* ***State*** *for the Home Department* [2005] 2 AC 68, at [29]. For my part, I would regard this as self evident, given the subject-matter under consideration; the 'cost of failure' (see [45] above) is a most pertinent consideration. See, further, the authorities cited by Cranston J, at [43] – [46] of the judgment [2010] EWHC 2825 (Admin).
>
> ii) Given the nature of the decision, the SSHD must be accorded a wide margin of appreciation (or discretion). This is an area where, again adopting an observation of **Lord** Bingham (*loc cit*), 'reasonable and informed minds may differ'. Take, for instance, the 'Prevent' strand in the UK government's counter-terrorism strategy, to which reference was made in the evidence; judgment calls of no little difficulty will be required in determining the extent, nature and termination of engagement with those of extreme **v** iews. Further and as will be emphasised below, it is of the first importance that the Court does not substitute its views for those of the SSHD; a reminder that the SSHD enjoys a wide discretion serves as a useful warning to the Court against straying into territory more properly that of the SSHD.
>
> iii) As it seems to me (and with great respect to the extensive discussion of such matters in the literature), it matters little whether an approach which accords great weight and a wide margin of appreciation to decisions of the SSHD in this area is best described in terms of 'deference' or 'demarcation of functions' (**Lord** Bingham, *loc cit*). The point is the same. Put simply and whether as a matter of 'deference' or 'demarcation', in areas such as national security or public order, the SSHD is likely to have advice and a perspective not or not readily available to the Court.
>
> iv) Nothing in the above observations precludes the Court from reviewing the decision of the SSHD by reference to what Carnwath LJ has termed ([62] above) 'public law and human rights principles'. Where Convention rights are involved,

that review will be an 'intensive review': *A* **v Secretary** *of* **State** *for the Home Department, supra,* headnote at p.69. Such a review would (as appropriate, see Carnwath LJ at [48] above) extend to the rationality, legality, procedural regularity and proportionality of a Ministerial decision. If it is necessary, which I am not sure it is, to add descriptive phrases to 'intensive review', then, no doubt, intensive review will involve 'the most careful scrutiny': *Cox* **v** *Turkey (supra)*, at [38].

v) But, whatever the intensity of the review, it is crucial that the Court should not substitute its views for those of the SSHD. The Court does not assume the role of the decision-maker; the Court's task is and remains one of review. It follows that a measure of judicial reserve or restraint must be prudent in this sphere - serving to underline the Court's proper role and to guard against usurping, however inadvertently, the role of the decision-maker. In any event, a Court will not lightly overturn a decision of the SSHD as to what is conducive to the public good, still less a decision made by the SSHD personally."

30. It is also convenient to cite the approach of the European Court of Human Rights to questions such as those before this Court. In *Vogt* **v** *Germany* (Application no. 17851/91) the Grand Chamber said, at paragraph 52(iii):

> "The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 (art. 10) the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent **State** exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see the *Sunday Times* **v** *. the United Kingdom (no. 2)* judgment of 26 November 1991, Series A no. 217, p. 29, para. 50). In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 (art. 10) and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see the above-mentioned *Jersild* judgment, p. 26, para. 31)."

31. The principles expressed in *Vogt* were endorsed in *Ahmed and ors* **v** *UK* (65/1997/849/1056) (1998) 5 BHRC 111 at paragraph 55:

> "The Court recalls that in its above-mentioned *Vogt* judgment (pp. 25–26, § 52) it articulated as follows the basic principles laid down in its judgments concerning Article 10:
>
> (i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any exceptions must be convincingly established.
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2 implies the existence of a 'pressing social need'. The Contracting **States** have a certain margin of

appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent **State** exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it is 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts."

32. Thus, in order to uphold what would otherwise be an infringement of a Convention right, the **State** must "establish convincingly" that the measure in question was necessary in a democratic society: *ibid*, paragraph 61.

33. It is at the stage of the Court's assessment of the question whether the **Secretary** of **State** has established convincingly the need to continue to exclude Mrs **Rajavi** that I encounter real difficulties with the Claimants' case. I do not think that the **Secretary** of **State** did not recognise the importance of the rights affected by her decisions. The decision of January 2012 shows that she did.

34. In *Naik*, the appellant had been excluded because of his apprehended behaviour in this country. *Farrakhan* was a similar case. In the present case, no criticism has been suggested of what Mrs **Rajavi** might say or do in this country, and I do not think any criticism could be levelled at her aspirations as she has expressed them. The basis of the **Secretary** of **State**'s decisions is different, as appears above. This case more closely resembles *R (Corner House Research and another)* ***v*** *Director of the Serious Fraud Office* [2008] UKHL 60 [2009] 1 AC 756. In that case, the facts of which are too notorious to require restatement, there was an express threat of action by a foreign government, whereas in the present case there has been no threat, there is only fear of such action. However, that difference is not significant. In both cases, there has been an assessment by the executive of the possibility of unwelcome action (in the present case, possibly unlawful action) by a foreign government. The impugned decision in *Corner House* was of a kind with which the courts are traditionally slow to interfere. As **Lord** Bingham said:

"31. The reasons why the courts are very slow to interfere are well understood. They are, first, that the powers in question are entrusted to the officers identified, and to no one else. No other authority may exercise these powers or make the judgments on which such exercise must depend. Secondly, the courts have recognised (as it was described in the cited passage of *Matalulu* ***v*** *DPP* [2003] 4 LRC 712)

> 'the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits.'"

35. While the decisions in question are different, the citation from *Matalulu* is as applicable to the present case as it was in *Corner House.* This is not a case, such as *Zatuliveter* **v Secretary** of **State** *for the Home Department* [2011] UKSIAC 103/2010 (the decision of 29 November 2011), in which the Court or Commission can make findings of primary facts from which it can decide the principal issue in controversy (Was the appellant a Russian agent?). In the present case, we are concerned with fears or apprehensions, based on assessments or judgments made with the wide experience and expertise and information available, in particular to the Foreign and Commonwealth Office, which the Court is not in a position to gainsay. The controversy between the Claimants and the **Secretary** of **State** as to the level of support for Mrs **Rajavi** and her organisation within Iran is but one obvious example of an issue that the Court cannot sensibly determine.

36. There are certain aspects of the **Secretary** of **State**'s apprehensions that I would doubt. It is scarcely believable that the Iranian government's decision whether or not to develop and to make atomic weapons will be influenced by the admission of Mrs **Rajavi** to the United Kingdom. However, when I come to ask myself whether it is credible that the revocation of the exclusion, and the admission into this country, of such a prominent opponent, regarded by that government no doubt as a dangerous terrorist seeking its overthrow, and the location of the Houses of Parliament for her meeting with members of the legislature, will be regarded by it as a hostile act of the UK Government, I am driven to say that it is entirely credible, indeed likely. I accept that the Iranian government would regard any act of any branch of the UK Government, i.e., of members of the legislature or of the judiciary, as an act of the executive branch of government. If I then ask whether it is credible that a government that has flouted international law, not least the law protecting diplomatic staff and premises, and suppressed with violence domestic demonstrations by its own people against its rule, would retaliate by taking action against Iranian employees of our Government, i.e., the local embassy staff, or against UK citizens whom it finds in Iran, again I have to say that it is entirely credible.

37. The withdrawal of British Embassy staff and family from Iran is an indication that the FCO regarded the risk to them as real. The fact that local staff were arrested in 2009 and falsely accused of instigating protests after the disputed Presidential election makes it impossible to discount the risk to them. If there is a credible risk, it is for the executive branch of government to assess it and to act appropriately in the light of that assessment. Such action by the government of Iran would be irrational and unlawful; but so was the attack on and the sacking of the British Embassy in Tehran. The retaliation could take the form of taking local staff into custody and subjecting them to serious ill treatment. The fact that it was the British Embassy that was attacked shows that the risks to this country and those connected with it are not the same as those for other European **states**.

38. The decisions to exclude Mrs **Rajavi** have been made repeatedly by the **Secretary** of **State** personally, most recently (if not previously) on the recommendation of the **Secretary** of **State** for Foreign and Commonwealth Affairs and the Parliamentary Under-**Secretary** of **State** at the FCO, Alistair Burt. If they consider that the risk is sufficiently great to justify Mrs **Rajavi**'s exclusion, this Court is not in a position to say that is mistaken. It is this risk, of retaliation against local employees in Iran, that most influences my decision. If only one of the local employees were to be taken into custody and ill treated as a result of the admission of Mrs **Rajavi**, I would accept that her admission was a mistake.

39. For these reasons, I consider that the **Secretary** of **State** has established that the continued exclusion of Mrs **Rajavi** is a proportionate and therefore justified measure for the purposes of Article 10.2.

Conclusion

40. It was a sad irony that, on the day following the tragic death of Marie Colvin, an intrepid journalist seeking to convey the truth of atrocities in Syria, this Court heard a case in which the Home **Secretary** seeks to uphold a restriction on the right of members of the Houses of Parliament to receive in the Palace of Westminster information from and the opinions of a prominent Iranian dissident whose country is an ally of the Syrian government. From the beginning, my heart has been with the Claimants, and I would dearly have liked to find in their favour. Reluctantly, however, I have concluded that it would be wrong to do so.

41. The **Secretary** of **State** is accountable for her decisions legally and politically. In my judgment, she has shown that her decisions are lawful. Her political accountability, for the wisdom or otherwise of her decisions, is to Parliament.

42. I would dismiss the claim for judicial review.

Mr Justice Underhill