Hilary Term
[2010] UKSC 1

JUDGMENT

Application by Guardian News and Media Ltd and others in Her Majesty's Treasury (Respondent) *v* Mohammed Jabar Ahmed and others (FC) (Appellants) Her Majesty's Treasury (Respondent) *v* Mohammed al-Ghabra (FC) (Appellant) R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) *v* Her Majesty's Treasury (Appellant)

before

Lord Phillips, President
Lord Hope, Deputy President
Lord Rodger
Lord Walker
Lady Hale
Lord Brown
Lord Kerr

JUDGMENT GIVEN ON

27 January 2010

Heard on 5 and 22 October 2009

Applicants
Geoffrey Robertson QC
Anthony Hudson

(Instructed by Finers Stephens Innocent LLP)

Respondent
Jonathan Swift
Sir Michael Wood
Andrew O'Connor
(Instructed by Treasury Solicitor)

Appellants
Hugh Tomlinson QC
Dan Squires
(Instructed by Birnberg Peirce and Partners)

This is the unanimous judgment of the Court delivered by:

LORD RODGER

1. "Your first term docket reads like alphabet soup." With these provocative words counsel for a number of newspapers and magazines highlighted the issue which confronts the Court in this application. In all the cases down for hearing in the first month of the Supreme Court's existence at least one of the parties was referred to by an initial or initials. Thanks to the relevant Practice Note, the same goes for the very last case heard by the House of Lords (*BA (Nigeria) v Secretary of State for the Home Department* [2009] UKSC 7; [2009] 3 WLR 1253) and the very first judgment handed down by the Supreme Court (*In re appeals by Governing Body of JFS* [2009] UKSC 1; [2009] 1 WLR 2353). See *Practice Note (Court of Appeal: Asylum and Immigration Cases)* [2006] 1 WLR 2461. Indeed, so deeply ingrained has the habit of anonymisation become that the judgment of the Court of Appeal in *AM (Somalia) v Entry Clearance Officer* [2009] EWCA Civ 634 was published under that name, and came on appeal to the Supreme Court under the same name, even though Maurice Kay LJ had begun his judgment by saying that anonymity was unnecessary. At the hearing of the appeal that assessment proved to be correct. See *Mahad v Entry Clearance Officer* [2009] UKSC 16; [2010] 1 WLR 48.

2. These are simply examples of what is now a widespread phenomenon. For instance, on a rough calculation, in 8 out of the 58 appeals decided by the House of Lords in 2007 at least one of the parties appeared under an initial; the same applied in 15 out of 74 cases in 2008. Admittedly, cases reaching the House of Lords and the Supreme Court are not necessarily typical of those going through the court system as a whole, but the general impression is that the practice of referring to parties by initials has increased at all levels in recent years. Even assuming that the use of initials was justified in many cases, the present appeals show that an order ("anonymity order") may be made, often by consent of both parties, without the court considering in any detail what is the basis or justification for it. This happens despite Sir Christopher Staughton's warning, in *Ex p P*, The Times 31 March 1998, that "when both sides agreed that information should be kept from the public, that was when the court had to be most vigilant." Lord Woolf MR quoted the warning with approval in *R v Legal Aid Board, Ex p Kaim Todner* [1999] QB 966, 977D-E. The application challenging the anonymity orders in these appeals provides an opportunity for reviewing the position.

3. The appeals involve five individuals: four of them, A, K, M and G, are appellants; the fifth, HAY, is the respondent and cross-appellant in an appeal by the Treasury. For simplicity's sake, and unless the context otherwise requires, references to "the appellants" include HAY. When the appeals were lodged, the appellants' names were concealed by the use of letters. This was the result of orders first made at the outset of the proceedings in the administrative court. Take, for instance, the case of A. On 15 February 2008 Collins J ordered that "The claimant be granted anonymity throughout these proceedings and be referred to as A. No report of these proceedings shall directly or indirectly identify him or any member of his family." The practice is for such orders to be intimated to the Press Association. In these cases, therefore, the orders were in place during the substantive hearings. Following those hearings, with the consent of the Treasury, Collins J continued the anonymity orders in the cases of A, K and M. In the case of G, he continued the order, but left it to the Court of Appeal "to make the final decision as to whether the anonymity order in his case should or should not be lifted."

4. When allowing the Treasury's appeal, [2009] 3 WLR 25, the Court of Appeal included an order, apparently of consent, that "The respondents shall be granted anonymity and no report of these proceedings shall directly or indirectly identify them or any member of their families." That was the position when the appeals came before this Court and the press and media ("the press") made their application to have the anonymity orders set aside. The Court decided to set aside the order in the case of one of the appellants, G, but to postpone consideration of the application relating to the others until after the substantive hearing. A separate hearing to consider the application in respect of those appellants took place on 22 October when the Court also considered the application to set aside the anonymity order in the separate case of HAY.

5. Counsel for the applicants suggested that, since rule 27 of the Supreme Court Rules 2009 provides for every contested appeal to be heard in open court, the appellants should have made an application for a fresh anonymity order to cover the appeal to this Court. We would reject that contention. There was never any question of departing from rule 27: the hearing of the appeals was always going to be in open court. The anonymity orders simply restricted the form of any report of the hearing. So far as anonymity orders are concerned, the practical approach is that, where an open-ended order has been made, it should remain in force throughout the proceedings, at whatever level, unless and until it is set aside, either spontaneously on a change of circumstances, or as the result of an application by the press. That approach promotes certainty and avoids unnecessary applications.

6. Although the courts below appear to have granted the anonymity orders without any very prolonged consideration and without explaining their thinking, the appellants contend that the orders are necessary because identifying them as the claimants in these proceedings would infringe their rights under article 8 of the European Convention on Human Rights and Fundamental Freedoms to respect for their private and family life. To understand that contention, it is necessary to outline the events giving rise to the proceedings.

The Background Events

7. The three appellants A, K and M are brothers in their thirties. On 2 August 2007 each of them was informed that the Treasury had reasonable grounds for suspecting that he was, or might be, a person who facilitated the commission of acts of terrorism. All three had, accordingly, been designated under article 4 of the Terrorism (United Nations Measures) Order 2006 ("TO 2006"). Subsequently, the Treasury indicated that in 2004 an Al-Qaida-linked operative had alleged that A and M were Al-Qaida facilitators based in East London, with M as the leader of the group. It was further suggested that K and M were involved, with others, in funding Al-Qaida contacts in the tribal areas of Pakistan. The three men deny all the allegations and maintain that they are of good character.

8. In the case of these appellants the Treasury decided, in accordance with article 5(1)(a)(ii) of the TO 2006, to inform only certain persons about the order. In that situation article 6 applied:

> "(1) Where the Treasury propose (in accordance with article 5(1)(a)(ii)) to inform only certain persons of a direction, they may specify in the direction that information contained in it is to be treated as confidential.
>
> (2) A person who obtains information which is to be treated as confidential in accordance with paragraph (1), or to whom such information is provided, must not disclose it except with lawful authority.
>
> (3) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—

(a) the disclosure is by the Treasury;

(b) the disclosure is with the consent of the person who is the subject of the information;

(c) the disclosure is to (and is necessary to) give effect to a requirement under this Order;

(d) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description.

(4) This article does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

(5) A person who contravenes the prohibition in paragraph (2) is guilty of an offence.

(6) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was disclosing confidential information.

(7) The High Court or, in Scotland, the Court of Session may grant an injunction to prevent a breach of paragraph (2) in relation to any information upon the application of—

(a) the person who is the subject of the information, or

(b) the Treasury."

The letters sent to the appellants informed them that the Treasury had "specified in the direction that your identity is to be treated as confidential in accordance with article 6 of the order."

9. It followed that, unless the appellants consented or a court ordered that their names were to be disclosed for the purposes of these proceedings (article 6(3)(b) and (d)), their identities were to be treated as confidential.

10. Counsel for the Treasury could not explain the precise basis upon which the Treasury had chosen to specify that the identities of A, K and M were to be treated as confidential. But he indicated that there would have been some input

from the Security Services. Plainly, the attitude of the Treasury could not be determinative for the courts. But the point is now academic, since - subject to one qualification which it is unnecessary to explore - the Treasury has changed its position. By the time of the hearing of the application by the press, the Treasury no longer opposed setting aside the anonymity orders granted in the courts below.

11. In fact, in July 2009 Her Majesty had made The Terrorism (United Nations Measures) Order 2009 ("TO 2009"). On 30 October 2009 – after the hearing of the present application - the Treasury revoked the designations of A, K and M under the TO 2006, but made fresh directions designating them under article 4 of the TO 2009. In accordance with the change of position explained at the hearing of the application, when it made the fresh directions the Treasury considered that it was no longer necessary to apply any restrictions on their publication under the TO 2009. The Treasury decided, however, that, "in the interests of justice", pending this Court's decision on the anonymity issue, it would actually restrict publication of the directions pursuant to article 6(2)(b)(iii) of the TO 2009.

12. In the result the Treasury does not oppose the Court making an order that disclosure is required for the purpose of these proceedings. That order would have the effect of making disclosure of these appellants' identities lawful by virtue of article 8(3)(d) of the TO 2009.

13. Under the anonymity orders granted below, the other appellant was to be referred to as G. On 13 December 2006 he received a letter informing him that the Treasury had made a similar direction under article 4 of the TO 2006. In his case, however, the letter told him that the Bank of England, acting as agent for the Treasury, had issued a notice and press release publicising the direction generally. And the Bank of England's News Release dated 13 December does indeed name G as Mr Mohammed al-Ghabra, living in East London. A few days later he received a letter from the Foreign and Commonwealth Office indicating that the 1267 Committee (i e the Sanctions Committee) of the United Nations Security Council had added him to its consolidated list of Usama Bin Laden, Al Qaida and the Taliban and other individuals, groups, undertakings and entities associated with them. This meant that his funds, assets and economic resources were frozen. In March of the following year he was told that he was subject to the Al-Qaida and Taliban (United Nations Measures) Order 2006 ("AQO"). This is because any person designated by the 1267 Committee is automatically designated for purposes of United Kingdom law by virtue of article 3(1) of the AQO.

14. In G's case, at the outset of the hearing of the substantive appeal, the Court was shown material confirming that, as just narrated, his identity as someone who was subject to a freezing order was already in the public domain. It had been given in the Bank of England's press notice and had also been contained in the relevant list published by the 1267 Committee. These matters had been reported in the press. In the circumstances, the anonymity order made by the lower courts served no effective or legitimate purpose and so, as already mentioned, this Court decided to lift the order in his case. The press were therefore able to report that G is actually Mr Mohammed al-Ghabra. Articles containing that information were published the following day. No evidence was produced to the Court on behalf of Mr al-Ghabra or any of the other appellants to show that either the Bank of England's original press release or the lifting of the anonymity order by this Court had led to any particular social, far less physical, harm to him or to any members of his family.

15. Subsequently, by letter dated 22 October 2009 Mr al-Ghabra was informed that the Treasury had designated him afresh under article 4 of the TO 2009. But, in view of the fact that his identity was already known (partly as a result of the order of this Court), no restriction was placed on the publication of the Treasury's direction in his case. His designation under the AQO remained unchanged.

16. Finally, as already explained, the respondent in a separate appeal by the Treasury, which raises similar substantive issues, is known under the initials HAY. By a letter dated 6 October 2005 the Foreign and Commonwealth Office informed him that on 29 September the 1267 Committee had added him to their consolidated list. Persons included on the list were subject to the freezing of their funds, economic resources and other financial assets. On 10 October the Bank of England issued a press release naming HAY as one of seven people whose names had been added to the list, as a result of which they fell within the financial sanctions régime under the AQO. He was named as Mr Hani al-Sayyid Al-Sebai, also known by a variety of other names, including Hani Youssef ("Mr Youssef"). He was described as an Egyptian living in London. In fact, shortly after HAY's designation, in about January 2006 the Government started trying to persuade the 1267 Committee and the designating state to provide disclosure to HAY. In June 2009 the Government went further and began trying to persuade them to agree that his name should be removed from the list. By the time of the hearing of this application those efforts had not been successful.

A and K

17. Although A, K and M remain unidentified at this stage, counsel appearing for the appellants informed us that both A and K have actually left their addresses in London. They have not been in touch with their solicitors and their solicitors do not know their whereabouts. So there is no way of knowing whether they are still in the United Kingdom. In these circumstances counsel was obviously unable to put forward any, far less any compelling, submissions as to the effect which identification of them as parties in these proceedings would now have on them or their families. In that situation they do not appear to have any substantial article 8 interest to counteract the interest of the press in publishing a full report of the proceedings. But revealing the identities of A and K would have the incidental effect of revealing the identity of their brother, M. A final decision on their position must therefore wait until M's position has been considered.

HAY

18. HAY contended that his identification in any report of the present proceedings would result not only in his public identification but also in the further inevitable identification of his wife and children. It was also said that there would be a risk that the Egyptian authorities would take some form of retributive action against members of his family who live in Egypt and that his wife and children would suffer adverse consequences.

19. As just explained, however, the fact that HAY had been listed by the 1267 Committee was announced by the Bank of England in its press release as long ago as October 2005 and he had been named at that time. So, in this respect, Mr Youssef is in the same position as Mr al-Ghabra. That in itself would often be justification enough for setting aside the anonymity order. But the matter actually goes much further. In the first place, since 1999, articles have repeatedly appeared in the press about Mr Youssef, some of them mentioning his wife and children and that they were living in Hammersmith. In addition, counsel for the Treasury pointed out that HAY was actually the Mr Hani El Sayed Sabaei Youssef who, under that name, had brought a claim for damages for wrongful imprisonment against the Home Office. The judgment of Field J in that case, finding that Mr Youssef had been detained unlawfully for 14 days, named him and was published as *Youssef v Home Office* [2004] EWHC 1884 (QB). The judgment gives a detailed account of his position and of the Government's consideration of whether he could safely be deported to Egypt. It is plain that the Egyptian Government are well aware of Mr Youssef's situation in this country.

20. HAY is also known as Dr Hani al-Seba'i and under that name he acts as the Director of the Al-Maqrizi Centre for Historical Studies in London. He gives statements to the press and often broadcasts on Al-Jazeera. Despite this, there is no evidence that any members of his family, whether in this country or in Egypt, have been adversely affected in any way. These matters, which must have been well known to Mr Youssef, should not have been concealed from the courts. It is plain that there never was the slightest justification for making an anonymity order in his case. It must be set aside.

M's Position

21. That leaves the application by the press to have the anonymity order in respect of M set aside. According to a witness statement submitted on his behalf, M lives in the same property as his ex-wife and five children. He is involved with his children, taking them, when he can, to school or the park etc. He fears that, if his designation as a suspected terrorist is revealed, this may lead to a loss of contact, for himself and his children, with the local Muslim community who may fear to be associated with him. Furthermore, in the written submissions on his behalf the argument is that publication of his name would cause serious damage to his reputation in circumstances in which he has not been charged with, or convicted of, any criminal offence and so has no opportunity to challenge the substance of the allegations against him. In that situation an anonymity order is said to be needed in order to protect his article 8 Convention rights.

Press Reporting of Judgments in the United Kingdom

22. In the United Kingdom, until the recent efflorescence of anonymity orders, the general rule both in theory and in practice was that judicial proceedings were held in public and the parties were named in judgments. Their names would also be given in newspaper reports and in the law reports. That is still usually the position – as can be seen from the frequent press reports of, say, employment tribunal hearings and decisions where details of personal and sexual relationships among the warring parties are a common feature.

23. In the nineteenth century many couples would doubtless have been only too pleased to agree to have their divorce heard in private. But the court sat in public and reports of the evidence, often recounting high-class intrigues, were published in the newspapers. These reports gave rise to concern in some quarters, especially since they were particularly popular reading-matter among servants. So, during the nineteenth and early twentieth centuries, various

attempts were made to introduce legislative controls. The attempts foundered, partly because the unpleasant publicity was thought to act as a welcome deterrent against couples divorcing. Against that background, in *Scott v Scott* [1913] AC 417 the House of Lords affirmed in the strongest possible terms the long-established stance of the English courts that hearings should be held in public. The first instance judge was criticised for hearing the nullity proceedings in private.

24. Eventually, however, in the Judicial Proceedings (Regulation of Reports) Act 1926 Parliament intervened to restrict the freedom of the press to report any indecent matter, the publication of which would be calculated to injure public morals. Special limitations were placed on what could be reported about divorce and other matrimonial proceedings. But, even so, the right to report the names, addresses and occupations of the parties and witnesses and a concise statement of the charges, defences and counter-charges was affirmed. The purpose of the legislation was therefore not the protection of the parties' privacy but the prevention of injury to public morals throughout Great Britain: *Friel v Scott* 2000 JC 86, 88D-89C. See G Savage, "Erotic Stories and Public Decency: Newspaper Reporting of Divorce Proceedings in England" (1998) 41 The Historical Journal 511-528.

25. Over the years Parliament has gone on to create a considerable number of exceptions to the ordinary rule that proceedings must be held in public. Similarly, Parliament has gone beyond the Judicial Proceedings (Regulation of Reports) Act 1926 and has introduced other statutory restrictions on what may be reported in various kinds of cases, especially those involving children. See, for instance, section 39 of the Children and Young Persons Act 1933, section 97 of the Children Act 1989 and section 45 of the Youth Justice and Criminal Evidence Act 1999. "Given the number of statutory exceptions," Lord Steyn observed in *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, 604,

> "it needs to be said clearly and unambiguously that the court has no power to create by a process of analogy, except in the most compelling circumstances, further exceptions to the general principle of open justice."

Anonymity Orders to Give Effect to Article 8 Convention Rights

26. In an extreme case, identification of a participant in legal proceedings, whether as a party or (more likely) as a witness, might put that person or his family in peril of their lives or safety because of what he had said about, say, some powerful criminal organisation. In that situation, he would doubtless ask for an anonymity order to help secure his rights under articles 2 and 3 of the European Convention. Those Convention rights are not in play in these appeals, however, since counsel accepted that the appellants could not show that publication of their names would put any of them or their families at risk of physical violence.

27. States are, of course, obliged by articles 2 and 3 to have a structure of laws in place which will help to protect people from attacks on their lives or from assaults, not only by officers of the state but by other individuals. Therefore, the power of a court to make an anonymity order to protect a witness or party from a threat of violence arising out of its proceedings can be seen as part of that structure. And in an appropriate case, where threats to life or safety are involved, the right of the press to freedom of expression obviously has to yield: a newspaper does not have the right to publish information at the known potential cost of an individual being killed or maimed. In such a situation the court may make an anonymity order to protect the individual.

28. Under the Human Rights Act 1998 article 8(1) requires public authorities, such as the court, to respect private and family life. But M does not need to ask for the anonymity order to prevent the court itself from infringing his article 8 Convention rights. Suppose the court considers, whether in the light of submissions or not, that, by publishing its judgment in the usual form, it will itself act unlawfully under section 6 of the Human Rights Act because it will infringe a party's article 8 Convention rights. In that eventuality, the court does not deal with the matter by issuing anonymity orders to other people; rather, it ensures that it acts lawfully by taking appropriate steps of its own. That presumably explains why, for instance, the letter M, instead of the appellant's name, is used in the judgments below. In this way the courts avoid what they perceive to be the problem that they would act unlawfully if they named M in their judgments and so infringed his article 8 rights.

29. In fact, however, in these cases the courts have gone further: they have not only used initials in their judgments but have made anonymity orders addressed to other people - in effect, to the press. Having the power to make orders of this kind available is one of the ways that the United Kingdom fulfils its positive obligation under article 8 of the Convention to secure that other

individuals respect an individual's private and family life. In *Von Hannover v Germany* (2005) 40 EHRR 1, 25, para 57, the European Court of Human Rights reiterated that:

> "although the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves….
>
> The boundary between the State's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole…" (internal citations omitted).

So, when M applied to the courts below for an anonymity order, he was asking them to exercise their power to secure that other individuals, viz the press and journalists, showed respect for his private and family life.

30. To comply with article 8, United Kingdom law must have a remedy of this kind available for use in appropriate cases. This means that the Human Rights Act has removed any doubts that might otherwise have existed (cf *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47) about the availability of the remedy in English law. In *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, a woman had been charged with the murder of her son. The guardian of her remaining son sought an order restraining the media from identifying the woman and the victim, in order to protect the privacy of her remaining son. The House of Lords held that no such order should be made. But, speaking for all members of the appellate committee, Lord Steyn affirmed, at p 605, para 23, that the court did have jurisdiction to make an order of this kind and that "the foundation of the jurisdiction to restrain publicity in a case such as the present is now derived from Convention rights under the ECHR." More recently, in *In re British Broacasting Corpn*

[2009] UKHL 34; [2009] 3 WLR 142, 161, para 57, Lord Brown of Eaton-under-Heywood indicated that the powers of the High Court to make such an order "arise under section 6 of the [Human Rights Act 1998] read in conjunction with section 37 of the [Senior Courts Act 1981]."

31. Incidentally, Collins J appears to have thought that section 11 of the Contempt of Court Act 1981 was the source of the power to make anonymity orders that is in play in these cases. That view was mistaken. Section 11 is dealing with the particular situation where a court, having power to do so, allows a name or other matter to be withheld from the public in proceedings before the court. An obvious example is a court allowing the victim to withhold his name when giving evidence for the Crown in a prosecution for blackmail. Section 11 then gives the court the ancillary power to give directions prohibiting a newspaper which actually knows the name of the individual from publishing it. The section resolves any doubt about the power of the court in these circumstances to prevent persons, other than the parties, from naming the individual or mentioning the matter outside court. Cf *Ex p P*, The Times 31 March 1998, per Sir Christopher Staughton.

32. Counsel for the press argued, however, that M's reputation does not fall within the scope of article 8. The argument is best addressed after looking at article 10.

The Press and Article 10 Convention Rights

33. The press found their case for setting aside the anonymity order in favour of M on their article 10 Convention rights to freedom of expression. Although article 10(1) does not mention the press, it is settled that the press and journalists enjoy the rights which it confers.

34. In asserting their right to publish M's name, the press are not asking to be supplied with information which would otherwise not be available to them. On the existing Strasbourg case law, a right to obtain that kind of information is not within the scope of article 10(1): *Leander v Sweden* (1987) 9 EHRR 433, 456, para 74. Here, however, the cases are heard in public and, were it not for the use of his initial and the anonymity orders, M's name would be available to the press and they would be free to report it. Indeed, the effect of the orders is that, even if the press are aware of M's name from other sources (which may well be the case), they cannot use it when reporting the proceedings. So, by making the orders, the courts have interfered with the article 10 Convention

rights of the press to impart information which either is, or normally would be, available to them.

35. Equally clearly, the court interferes with the article 10 rights of the press when it takes a step, such as making an anonymity order, which interferes with their freedom to report proceedings as they themselves would wish – in the present case, by making their report refer to the situation of named, identifiable, individuals, including M. See, for instance, *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39:

> "The Court recalls that it is not for the Court, or for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed."

36. Nevertheless, under article 10(2), the right of the press to freedom of expression can be subjected to restrictions which are prescribed by law and are necessary in a democratic society "for the protection of the reputation or rights of others". The "rights of others" include their rights under article 8.

Article 8 and Reputation

37. On behalf of the press, Mr Robertson QC did not dispute that article 8 rights fall within the scope of "the rights of others" in article 10(2). But, under reference to the judgment of the European Court of Human Rights in *Karakó v Hungary* (application no 39311/05), 28 April 2009, he submitted that article 8 does not confer a right to have your reputation protected from being affected by what other people say. So the only article in play in relation to M's reputation was article 10.

38. In *Karakó* the applicant was a politician. During an election campaign an opponent had said in a flyer that the applicant was in the habit of putting the interests of his electors second. The applicant accused his opponent of criminal libel, but the prosecutor's office terminated the investigation on the ground that the flyer concerned the applicant as a candidate rather than as a public official and so its publication was not a matter for a public prosecution. Then, acting as a private prosecutor, the applicant submitted an indictment for libel. The

district court dismissed the indictment on the ground that the opponent's statement was a value judgment within the limits of acceptable criticism of a politician. The applicant complained of a violation of his article 8 rights. The European Court held that there had been no such violation.

39. As the European Court's judgment in *Karakó* itself shows, in *Petrina v Romania* (application no 78060/01), 14 October 2008, the court had confirmed, at para 19, that the right to protection of reputation is a right which, as an element of private life, falls within the scope of article 8 ("le droit à la protection de la réputation est un droit qui relève, en tant qu'élément de la vie privée, de l'article 8 de la Convention"). The court had gone on, at para 29, to survey its previous case law, ending up with the statement in *Pfeifer v Austria* (2007) 48 EHRR 175, 183, para 35, that "a person's reputation, even if that person is criticised in the context of a public debate, forms part of his or her personal identity and psychological integrity...".

40. In *Karakó* the European Court did not depart from that earlier jurisprudence. Rather, it accepted, at para 23, that some attacks on a person's reputation could be of such a seriously offensive nature as to have an inevitable direct effect on the victim's private life. But the court took the view that, on the facts, the applicant had not shown that the publication in question had constituted such a serious interference with his private life as to undermine his personal integrity. That being so, the applicant's reputation alone was at stake in the context of the expression which was said to have damaged it.

41. Contrary to what Mr Robertson suggested, however, this conclusion did not mean that the court was proceeding on the basis that the applicant's claim in respect of his reputation did not fall within the scope of article 8. That would have been inconsistent with the court's previous case law and would also have made nonsense of the reasoning in paras 24-29 of the judgment. In particular, in paras 24 and 25 the court is concerned with the inter-relationship of articles 8 and 10 in the circumstances. The outcome of that discussion (para 26) is that, even though the applicant is founding on article 8, the court must consider whether the Hungarian authorities properly applied the principles inherent in article 10. The court concludes that they did (para 27). Putting the two strands together, the court goes on to find, in para 28, that the applicant's claim that his reputation as a politician has been harmed is not sustainable under article 8 and that a limitation of his opponent's right to freedom of expression under article 10 would have been disproportionate. That leads, finally, to the conclusion that there has been no violation of article 8.

42. In short, in *Karakó* the European Court was concerned with the application of articles 8 and 10 in a situation where, in the court's view, the applicant had not shown that the attack on his reputation had so seriously interfered with his private life as to undermine his personal integrity. In fact, the court does not mention any specific effects on the applicant's private life. In the present case, however, as already set out at para 21 above, M does explain how he anticipates that his private life would be affected if his identity were revealed. Admittedly, he appears at one point to single out the alleged damage to his reputation. Nevertheless, the Court is really being invited to consider the impact of publication of his name on his reputation as a member of the community in which he lives and the effect that this would have on his relationship with other members of that community. In that situation the alleged effect on his reputation should be regarded as one of the reasons why, he contends, a report that identified him would seriously affect his private life. On that basis the report would engage article 8(1).

The Approach when Article 8 and Article 10 are both in play

43. The case is, accordingly, one where both articles 8 and 10 are in play and the Court has to weigh the competing claims of M and his family under article 8 and of the press under article 10. More particularly, the Court is being asked, on the one hand, to give effect to the right of the press to freedom of expression and, on the other, to ensure that the press respect M's private and family life.

44. M objects to being identified as a person who is challenging the freezing orders against him which proceed on the basis that the Treasury suspects on reasonable grounds that he facilitates, or may facilitate, terrorism. In other words, what he really objects to is being identified as a person who the Treasury suspects, on what it regards as reasonable grounds, facilitates or may facilitate terrorism. He maintains that, if he is identified as such a person, his article 8 Convention rights will be infringed in the various ways outlined in para 21.

45. Two particular effects of an anonymity order of this kind should be noted.

46. First, M accepts, of course, that the freezing orders have been made against him under the TO 2006 and the TO 2009. And he does not challenge the fact that the Treasury made them because it claims to have reasonable grounds for suspecting that he facilitates, or may facilitate, terrorism. So the

effect of the anonymity order is to prevent the publication of these matters of fact which M does not – indeed cannot - challenge.

47. Secondly, the anonymity orders granted by the courts below are blanket orders: in the words of the Court of Appeal, "no report of these proceedings shall directly or indirectly identify [the appellants] or any member of their families." Sweeping orders of that kind proceed on the basis that the mere publication of *any* report of the proceedings which identified any of the appellants, including M, as a person suspected of facilitating terrorism would infringe his article 8 rights. This is clear from the fact that the ban prevents a newspaper, which is wholly sympathetic to the plight of M, from publishing a report of the proceedings that identifies him and from then going on to support his case and criticise the Government in the strongest possible terms for subjecting him to the ordeal of the freezing order. The Court has to be satisfied that a ban with this far-reaching effect is necessary in a democratic society in order to ensure due respect for M's private and family life.

48. The European Court gave guidance on the approach to be adopted when articles 8 and 10 are both in play in *Von Hannover v Germany* (2005) 40 EHRR 1. The circumstances were, of course, very different from those in the present cases: Princess Caroline was complaining of intrusions into her private life by the paparazzi taking photographs of her while she was engaged in ordinary, everyday, pursuits. The court held that, when so engaged, she was entitled to the protection of article 8. So it had to consider whether German law, which permitted these intrusions by the press, had properly balanced the rights of the press under article 10 and the rights of Princess Caroline under article 8. The European Court held that it had not.

49. The European Court recalled, at p 25, para 58, that "the press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest…". Hence "in the cases in which the Court has had to balance the protection of private life against the freedom of expression it has always stressed the contribution made by photos or articles in the press to a debate of general interest…" (p 25, para 60). The decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photos and articles make to a debate of general interest (p 28, para 76). But, where publication of the photographs and articles was simply intended to satisfy the curiosity of a particular readership regarding the details of the applicant's private life, it could not be deemed to contribute to any

debate of general interest to society. In that situation freedom of expression called for a narrower interpretation (p 27, paras 65 and 66).

50. The European Court's exposition in *Von Hannover* really echoed what Lord Hoffmann had said, a few weeks earlier, in *Campbell v MGN Ltd* [2004] UKHL 22; [2004] 2 AC 457, 473-474, paras 55 and 56:

> "55. I shall first consider the relationship between the freedom of the press and the common law right of the individual to protect personal information. Both reflect important civilised values, but, as often happens, neither can be given effect in full measure without restricting the other. How are they to be reconciled in a particular case? There is in my view no question of automatic priority. Nor is there a presumption in favour of one rather than the other. The question is rather the extent to which it is *necessary* to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification must be proportionate to the need: see Sedley LJ in *Douglas v Hello! Ltd* [2001] QB 967, 1005, para 137.
>
> 56. If one takes this approach, there is often no real conflict. Take the example I have just given of the ordinary citizen whose attendance at NA is publicised in his local newspaper. The violation of the citizen's autonomy, dignity and self-esteem is plain and obvious. Do the civil and political values which underlie press freedom make it necessary to deny the citizen the right to protect such personal information? Not at all. While there is no contrary public interest recognised and protected by the law, the press is free to publish anything it likes. Subject to the law of defamation, it does not matter how trivial, spiteful or offensive the publication may be. But when press freedom comes into conflict with another interest protected by the law, the question is whether there is a sufficient public interest in that particular publication to justify curtailment of the conflicting right. In the example I have given, there is no public interest whatever in publishing to the world the fact that the citizen has a drug dependency. The freedom to make such a statement

> weighs little in the balance against the privacy of personal information."

51. Lord Hoffmann's formulation was adopted by Lord Hope of Craighead in *In re BBC* [2009] 3 WLR 142, 149, para 17. Since "neither article has *as such* precedence over the other" (*In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, 603, para 17, per Lord Steyn), the weight to be attached to the rival interests under articles 8 and 10 - and so the interest which is to prevail in any competition - will depend on the facts of the particular case. In this connexion it should be borne in mind that – picking up the terminology used in the *Von Hannover* case - the European Court has suggested that, where the publication concerns a question "of general interest", article 10(2) scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania* (application no 78060/01), 14 October 2008, para 40 ("l'article 10(2) de la Convention ne laisse guère de place pour des restrictions à la liberté d'expression dans le domaine … des questions d'intérêt général").

52. In the present case M's private and family life are interests which must be respected. On the other side, publication of a report of the proceedings, including a report identifying M, is a matter of general, public interest. Applying Lord Hoffmann's formulation, the question for the court accordingly is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies M to justify any resulting curtailment of his right and his family's right to respect for their private and family life.

Anonymity in Europe

53. Unfortunately, no real additional help with the question of anonymity orders can be obtained from examining the practices of courts in Europe when issuing judgments. In all the principal systems, at least, steps can apparently now be taken, where appropriate, to anonymise reports of matrimonial disputes and disputes relating to children. Apart from that, however, what is striking is the variety of approaches.

54. In France, for instance, until recently, the general rule was that the parties' names were published. This led to an interesting case brought by the husband against the publishers of a law report of a divorce case in which he had been the defendant. The report identified him and the judgment gave embarrassing details about his sexual habits: *Franconville c Gazette du Palais*, Tribunal de grande instance de Paris 8.12.1971, Gaz Pal 1971, 2 Jur 836;

Gazette du Palais c Franconville, Cour d'appel de Paris 12.1.1973, Gaz Pal 1973, 1 Jur 137. The appeal court held in favour of the publishers and – rather as in Britain - legislation was subsequently brought in to change the law on the reporting of matrimonial cases. In 2001, however, the Commission Nationale de l'Informatique et des Libertés recommended that, if decisions were going to be made available free of charge on the internet, then they should be anonymised. Since 2002 the Cour de cassation has chosen to follow that recommendation and usually its decisions now appear without the parties' names. The Recueil Dalloz gives the parties' names in the headings, but prints the anonymised version of the text of the judgment. It is important to note that the press can, and do, consult the lists of cases, where the names appear, and in this way they are able to identify the parties when reporting the proceedings.

55. In Italy the general position is the same as it was in France before the changes initiated in 2002. In Germany, by contrast, the practice since the time of the Reichsgericht has been for the courts and the official reports to refer to the parties by the initials of their surnames or of their firm or company name. Also the parties' lawyers are not identified. The practice in Austria is broadly similar.

56. Until recently, the German courts rigidly followed this practice even where a case had received wide publicity and the names of the parties were actually well known to the public. They did the same when the judgment referred to the holder of a particular office, such as the Federal Chancellor, whose identity was common knowledge. The results could be risible and so, more recently, the courts have abandoned the practice in cases where the identity of a party, such as Princess Caroline of Monaco, is well known to the press and everyone else. See the discussions in O Jauernig, "Dürfen Prozeßbeteiligte in veröffentlichten Zivilentscheidungen namentlich genannt werden?" in K A Bettermann, A Zeuner, *Festschrift für Eduard Bötticher* (1969), pp 219-241; K Siehr, "Veröffentlichte Gerichtsentscheidungen: Zur Anonymisierung oder Veröffentlichung von Namen der Beteiligten eines Zivilverfahrens", in *Liber Amicorum Bernd Stauder* (2006), pp 469-484, especially at pp 477-481. The usual practice means that it is sometimes only when a case reaches the European Court of Justice or the European Court of Human Rights and the names are published for the first time in their judgments that people in Germany discover who the parties actually are. See Siehr, "Veröffentlichte Gerichtsentscheidungen", pp 482-483.

57. Despite criticisms, the German courts have followed the same practice for considerably more than a century. Some scholars have argued that a legal basis or justification for the practice can be found in the constitutional right of individuals to control of their personal data, as developed in the 1983

Constitutional Court judgment on the Census Law (Volkszählungsurteil): BVerfGE 65, 1. All that needs to be said for present purposes is that this is certainly not the origin of the courts' practice, which existed long before the German Federal Constitution. Even now, there is doubt about the exact explanation for it. One suggestion is that the courts do not mention the names because their view of the law must be seen to be objective and unaffected by the standing of the parties or their lawyers. At all events, when it uses initials and supplies the public with a version in which the parties' names are blanked out from the rubric, a German court is not trying to control how the case is to be reported by the press. Newspapers are free to use their own knowledge to identify the individuals involved and to name them in any report of the proceedings or judgment. While an anonymous version of the judgment may usually meet the needs of lawyers, the target audience of the press is likely to be different and to have a different interest in the proceedings, which will not be satisfied by an anonymised version of the judgment. In the general run of cases there is nothing to stop the press from supplying the more full-blooded account which their readers want.

Article 8 Arguments in favour of an Anonymity Order

58. In para 21 above, we have summarised the effects which, M says, publication of his name would have on the lives of himself and his family as members of the local Muslim community. It is more a comment than a criticism to point out that this evidence is somewhat speculative. Moreover, the impact of the publication of M's name is particularly hard for a court to judge when it does not know how he is currently regarded by other members of the community.

59. As one of the witness statements lodged on his behalf acknowledges, if publication were permitted, M would not be identified as someone who facilitated terrorism, but as someone whom the Treasury claims to have reasonable grounds to suspect of facilitating terrorism. But his fear is that, however accurate the reporting, members of the public would simply proceed on the basis that he *is* a terrorist. So the ban on publication, he says, should remain in place to prevent this.

60. That argument raises an important point of principle. It really amounts to saying that the press must be prevented from printing what is true as a matter of fact, for fear that some of those reading the reports may misinterpret them and act inappropriately. Doubtless, some may indeed draw the unjustified inference that M fears. But the public are by now very familiar with the argument that various measures, including control orders, have been taken

against people who are merely suspected of involvement in terrorism, precisely because the authorities cannot prove that they are actually involved. Politicians and the press have frequently debated the merits of that approach, the debates presupposing that members of the public, including members of the Muslim community, are more than capable of drawing the distinction between mere suspicion and sufficient evidence to prove guilt. Any other assumption would make public discussion of these and similar serious matters impossible. We therefore see no reason to assume that most members of the local Muslim community would be unable to draw the necessary distinction and to respond appropriately to any revelation that the Treasury suspects that M facilitates, or may facilitate, terrorism.

61. Mr Tomlinson QC submitted, however, that the fact that M cannot challenge the substance of the allegation against him is crucial. Admittedly, the House of Lords held in *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 that the press was entitled to name a woman who had been charged with murdering one of her children, even though this would affect the private life of her other son. The public interest in publishing the defendant's name outweighed the impact on the second son's private life. Nevertheless, Mr Tomlinson argued, the press should not reveal that the Treasury suspects M of facilitating terrorism, since this allegation will never be brought to trial and cannot be effectively challenged by M. In this situation the rights of M and his children to respect for their private life should outweigh the public interest in receiving a report of the proceedings which identifies him. An order which keeps M's identity confidential, but otherwise allows a full report of the proceedings to be published should be regarded as a fair compromise that gives due weight to M's right to respect for his private and family life, on the one hand, and to the interest of the public in being informed about the proceedings, on the other.

62. This is perhaps the main argument in favour of the anonymity order. Along with the others, it has to be considered against the points advanced by the press in favour of lifting the anonymity order and allowing M's identity to be revealed.

Article 10 Arguments against an Anonymity Order

63. What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which

capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39, quoted at para 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [2004] 2 AC 457, 474, para 59, "judges are not newspaper editors." See also Lord Hope of Craighead in *In re British Broadcasting Corpn* [2009] 3 WLR 142, 152, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.

64. Lord Steyn put the point succinctly in *In re S* [2005] 1 AC 593, 608, para 34, when he stressed the importance of bearing in mind that

> "from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer."

Mutatis mutandis, the same applies in the present cases. A report of the proceedings challenging the freezing orders which did not reveal the identities of the appellants would be disembodied. Certainly, readers would be less interested and, realising that, editors would tend to give the report a lower priority. In that way informed debate about freezing orders would suffer.

65. On the other hand, if newspapers can identify the people concerned, they may be able to give a more vivid and compelling account which will stimulate discussion about the use of freezing orders and their impact on the communities in which the individuals live. Concealing their identities simply casts a shadow over entire communities.

66. Importantly, a more open attitude would be consistent with the true view that freezing orders are merely indicative of suspicions about matters which the prosecuting authorities accept they cannot prove in a court of law. The identities of persons charged with offences are published, even though their trial may be many months off. In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent unless and until proved guilty in a court of law. That understanding can be expected to apply, a fortiori, if you are someone whom the prosecuting authorities are not even in a position to charge with an offence and bring to court. But, by concealing the identities of the individuals who are subject to freezing orders, the courts are actually helping to foster an impression that the mere making of the orders justifies sinister conclusions about these individuals. That is particularly unfortunate when, as was emphasised on the appellants' behalf, they are unlikely to have any opportunity to challenge the alleged factual basis for making the orders.

67. It might be argued that, nevertheless, in this particular case naming M in any report would be an unnecessary luxury. After all, it could be said, what actually matter are the legal and constitutional issues raised in the proceedings and these can be understood and debated on the basis of an anonymised report. But the very fact that M and the other appellants are not accepting, but challenging, the whole system of freezing orders based on mere suspicion means that they are presenting the orders as wrongs done to them, rather than as indications that they themselves have done something wrong. Concealing their identities runs counter to the entire thrust of that case. Should their appeals be allowed, concealment would be even less appropriate. Not E but Mr John Entick of Stepney has gone down in history as the plaintiff in the great case of *Entick v Carrington* (1765) 19 Howell's State Trials 1030; 95 ER 807.

68. Certainly, the identities of the claimants cannot affect the answers that this Court gives to the legal questions in the substantive appeals. So those identities may not matter particularly to the judges. But the legitimate interest of the public is wider than the interest of judges qua judges or of lawyers qua lawyers. Irrespective of the outcome, the public has a legitimate interest in not being kept in the dark about who are challenging the TOs and the AQO. The case of HAY is instructive in this respect. Most people will be astonished, for example, to learn that, up until now, the courts have prevented them from discovering that one of the claimants, Mr Youssef, has already successfully sued the Home Secretary for wrongful detention after a failed attempt to deport him to Egypt. Equally importantly, even while the Treasury is defending these proceedings brought by him, the Government are trying to have his name removed from the 1267 Committee list. Meanwhile, he is busy writing and broadcasting from London on Middle East matters.

69. By lifting the anonymity order in HAY's case the court allows members of the public to receive relevant information about him which they can then use to make connexions between items of information in the public domain which otherwise appear to be unrelated. In this way the true position is revealed and the public can make an informed judgment. There may well, of course, be no similar revelations in the case of M. But, assuming that is so, this would, in itself, be important, since it would contribute to showing how the freezing-order system affects different people in different situations – a point to be considered in any debate on the merits of the system. At present, the courts are denying the public information which is relevant to that debate, even though the whole freezing-order system has been created and operated in their name.

70. Along with A, K and G, M has himself sought to enter the debate about the merits of freezing orders. After the judgment of Collins J in these proceedings in April 2008, his solicitors issued a press release which included the following:

> "The five British nationals bringing this challenge who have been designated under the Orders have had their assets frozen, are only allowed to access enough money to meet basic expenses, and are compelled to account to a civil servant for every penny they spend. They are subject to unprecedented levels of intrusion and control without end or review. They require permission for all economic activity, however modest. The complex regime governed by permissions and licences is not merely harsh but at points absurd. We have the madness of civil servants checking Tesco receipts, a child having to ask for a receipt every time it does a chore by running to the shops for a pint of milk and a neighbour possibly committing a criminal offence by lending a lawnmower….
>
> The court ruling today has shown that the Government is willing to sacrifice the fundamental rights and liberties of its citizens, including the fundamental constitutional right that only Parliament can take away basic freedoms, when they think it convenient to do so. They have dishonoured their pledge of accountability and oversight through Parliament."

71. It is unusual, to say the least, for individuals to enter a debate, using highly charged language and accusing the Government of dishonouring a pledge, but at the same time to insist that they should have the right to hide behind a cloak of anonymity. It is also unusual for someone to assert the need for the press to respect his private and family life by not reporting his identity while simultaneously inviting them to report his version of the impact of the freezing orders on himself and members of his family. The public can hardly be expected to make an informed assessment of the argument if they are prevented from knowing who is making these points and, therefore, what his general stance is.

72. Of course, allowing the press to identify M and the other appellants would not be risk-free. It is conceivable that some of the press coverage might be outrageously hostile to M and the other appellants – even though nothing particularly significant appears to have been published when Mr al-Ghabra's identity was revealed. But the possibility of some sectors of the press abusing their freedom to report cannot, of itself, be a sufficient reason for curtailing that freedom for all members of the press. James Madison long ago pointed out that "Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press": "Report on the Virginia Resolutions" (1800), in *Letters and Other Writings of James Madison* (1865) Vol 4, p 544. The Press Complaints Commission is the appropriate body for dealing with any lapses in behaviour by the press. The possibility of abuse is therefore simply one factor to be taken into account when considering whether an anonymity order is a proportionate restriction on press freedom in this situation.

73. Although it has effects on the individual's private life, the purpose of a freezing order is public: it is to prevent the individual concerned from transferring funds to people who have nothing to do with his family life. So this is not a situation where the press are wanting to publish a story about some aspect of an individual's private life, whether trivial or significant. Rather, they are being prevented from publishing a complete account of an important public matter involving this particular individual, for fear of the incidental effect that it would have on M's private and family life.

74. So far as the potential effect on M's private and family life is concerned, the evidence is very general and, for that reason, not particularly compelling. The apparent lack of reaction to the naming of Mr al-Ghabra is relevant in this respect, since it suggests that the impact of identifying an individual on relationships with the local community is not likely to be as dramatic as the judges who made the orders appear to have anticipated. The fact that, through his solicitors, M has himself gone out of his way to put into the public domain

what he says are the effects of the freezing order on his family life, is also significant.

75. On the other hand, publication of M's identity would make a material contribution to a debate of general interest.

Conclusion

76. In these circumstances, when carrying out the ultimate test of balancing all the factors relating to both M's article 8 rights and the article 10 rights of the press, we have come to the conclusion that there is indeed a powerful general, public interest in identifying M in any report of these important proceedings which justifies curtailment, to that extent, of his, and his family's, article 8 Convention rights to respect for their private and family life.

77. For all these reasons, we would set aisde the anonymity order in respect of M. It follows that there is nothing to prevent the order in favour of A and K from being set aside for the reasons given in para 17. As explained in paras 18-20, the order in favour of HAY must also be set aside. Therefore, A, K, M and HAY will be named here and in the judgments on the substantive appeals, as Mr Mohammed Jabar Ahmed, Mr Mohammed Azmir Khan, Mr Michael Marteen (formerly known as Mohammed Tunveer Ahmed) and Mr Hani El Sayed Sabaei Youssef (or Hani al-Seba'i), respectively. In addition, in relation to article 8(3)(d) of the TO 2009, the Court will order that the identities of A, K and M should be disclosed for the purpose of these proceedings. The anonymity order in respect of the appellant, G, has, of course, already been set aside and he has been identified as Mr Mohammed al-Ghabra.

Anonymity in Control Order Cases

78. During the course of the argument, incidental reference was made to anonymity orders in proceedings relating to control orders made under section 2 of the Prevention of Terrorism Act 2005. The present proceedings do not concern control orders and therefore it would not have been possible on any view for the Court to set aside the anonymity orders in the proceedings relating to them. Many of the same issues would obviously arise if an application were made to set aside the anonymity orders made in any outstanding control order proceedings. The same principles would also have to be applied, but there may be arguments and considerations in those cases which were not explored at the hearing in this case. Conceivably, also, the position might not be the same in all

of the cases. We would accordingly reserve our opinion on the matter of anonymity orders in control order cases.