

# Immigration Team Legal Bulletin

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## Control orders

The Government's anti-terror legislation has suffered a further setback insofar as its powers pursuant to The Prevention of Terrorism Act 2005. In **JJ & Ors v SSHD [2006] EWHC 1623 (Admin)** (*Melanie Plimmer*) [judgment](#) the legality of Control Orders was considered by Mr Justice Sullivan, his decision has subsequently been upheld by the Court of Appeal in **SSHD v JJ & Ors [2006] EWCA Civ 1141** (*Melanie Plimmer & Ian Macdonald Q.C.*) [judgment](#)

The appellants were all suspected terrorists who have not been charged with any offences relating to terrorism. The SSHD sought to place serious restrictions on their liberty by making them subject to Control Orders. The appellants were subject to numerous restrictions on their liberty including being fitted with an electronic monitoring tag; being subjected to strict conditions of residence enforceable by curfew. In addition visitors were not entitled to enter the residence save for prior agreement with the Home Office. Similarly pre-arranged meetings outside the property were prohibited along with a range of additional restrictions such as a bar on outside communication and a geographical injunction (for full details see annex to Mr Justice Sullivan's judgment).

Sullivan J held that the conditions that the individuals were subjected to amounted to near house arrest, and that it was difficult to envisage how the individuals could engage with a normal life given the severity of the conditions they were subject to. Further, the obligations pursuant to the Orders carried with them severe sentences for breach which could lead to a maximum sentence of 5 years' imprisonment for conviction on indictment. The cumulative impact of the orders was such as to deprive the respondents of their liberty in breach of Article 5 of the Convention. It was made clear by both Sullivan J and by a senior Appeal Court that the breach under Article 5 was not even borderline, as these control orders went far beyond the restrictions in those cases where the European Court of Human Rights has concluded that there has been a restriction upon but not a deprivation of liberty. Sullivan J was also scathing about the SSHD's attempt to argue that the Orders be revoked or modified rather than being quashed noting that Parliament had given public assurances during that the Court would have the power to quash. The Control Orders were subsequently declared a nullity.

## Country guidance

Elsewhere **AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061** AIT Reported [judgment](#) - CG Case was finally determined. It was held that a person who is returned involuntarily to Zimbabwe having made an unsuccessful asylum claim in the United Kingdom does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone. And that as such each case must be considered on its own facts. The CG case of SM was reaffirmed as to risk categories, however in addition the AIT noted that those individuals whose military history discloses issues such as being absent without leave or having undertaken military activities outside of ZWE that will lead to further investigation by the security services upon return to Harare Airport and those in respect of whom there are outstanding and unresolved criminal issues have risk factors.

However, the AIT decided that there is no evidence that the fact alone of a past criminal conviction, as opposed to an unresolved allegation of criminal activity or an outstanding arrest warrant, will give rise to such an interest. It was decided that there was not evidence which suggested that the CIO has any interest in manufacturing or fabricating evidence to create suspicion that is otherwise absent.

The AIT did not determine the question as to whether a person who can voluntarily return in safety can rely upon Article 3 to resist an involuntary return. Although they noted that it may be that such a person cannot succeed under article 3 as the individual would have chosen in those circumstances to expose himself to a claimed risk unnecessarily, and that it would be the applicant's decision which exposed him to the risk rather than the act of the United Kingdom in returning him compulsorily as a consequence of his refusal to return voluntarily. It seems clear from this that the refusal to take steps to undertake a voluntary return is likely to be argued in enforced removal cases where an individual failed at IJ level and that any risks arising from an enforced removal may give rise to a finding of "intentional" torture or inhuman and/or degrading treatment. In our opinion this would represent an advance in human rights law which is discrepant with the absolute obligations arising under Article 3.

Finally, **HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062** [judgment](#) has just been promulgated. This finds that neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum. A person will not be at risk solely because he or she is of Darfuri origin or non-Arab Darfuri origin. Neither at the airport or subsequently will such a person face a real risk of being targeted for persecutory harm or ill treatment. Such a person can in general be reasonably expected to relocate to Khartoum. If that person were in practice compelled to live in an IDP camp or a squatter area in Khartoum, this would not expose the person concerned to a real risk of serious harm or ill treatment contrary to Article 3 or conditions which would be unduly harsh, according to the legal tests in Januzi [2006] UKHL 5, since there is no marked difference between conditions in such camps and squatter areas and the living conditions for most persons living in Sudan. The AIT proceeded to find that irrespective of the above, the burden of proving that a Claimant would have to live in a squatter camp falls on the individual applicant.

In spite of the acts of genocide taking place in Sudan the AIT consider that there will be limited categories of Darfuri returnees who will be at real risk on return to Khartoum, these are persons of non-Arab Darfuri origin from one of the villages or areas of Darfur which are "hotspots" or "rebel strongholds" from which rebel leaders are known to originate; persons (including certain students) whose conduct marks them out as oppositionists or anti-government activists; tribal leaders; persons who whilst in the United Kingdom have engaged in activities which the Sudanese government is likely to know about and regard as significantly harmful to its interests; female returnees, if they are reasonably likely to be associated with a Sudanese male of adverse interest to the authorities or if it is reasonably likely that they would have no alternative but to become a female-headed household in an IDP camp or squatter area. A thorough examination of the above issues will be required on initial contact with individual applicants.