



Neutral Citation Number: [2023] EWHC 2853 (Admin)

Case No: CO/2056/2023  
AC-2023-MAN-000238

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN MANCHESTER**

Wednesday, 15<sup>th</sup> November 2023

**Before:**  
**FORDHAM J**

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**Between :**  
**THE KING (on the application of**  
**DR IMAD NASSANI**  
**DR MOHAMAD BASHIR**  
**MR JAAFAR MUSTAFA)**

**Claimants**

**- and -**  
**SECRETARY OF STATE FOR FOREIGN,**  
**COMMONWEALTH AND DEVELOPMENT**  
**AFFAIRS**

**Defendant**

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**Dr Abdul-Haq Al-Ani** (by Direct Access) for the **Claimants**  
**Malcolm Birdling** (instructed by GLD) for the **Defendant**

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Hearing date: 7/11/23  
Confidential Draft Judgment circulated: 7/11/23  
Non-Confidential Judgment Released to the Parties: 14/11/23  
Finalised Judgment Handed-Down: 15/11/23  
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## **Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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FORDHAM J

**FORDHAM J:**Introduction

1. These are permission-stage judicial review proceedings which, by order dated 8 September 2023, I adjourned into open court. The target for challenge is the Secretary of State's decision to maintain, and not to revoke, the Syria (Sanctions) (Exit) Regulations 2019 (SI 2019 No.792). The 2019 Regulations were made in the exercise of statutory powers contained in Part 1 of the Sanctions and Anti-Money Laundering Act 2018. They are what is known in some quarters as "autonomous sanctions", and in others as "unilateral sanctions", because they have not been imposed by the United Nations. They were preceded by an EU-wide set of similar sanctions: EU Regulation 36/2023 and SI 2012 No.129.
2. The 2019 Regulations were accompanied by an Explanatory Memorandum and a Report pursuant to what at the time was a duty under s.2(4) of the 2018 Act. All of these are in the public domain, as are key materials on which the Claimant rely, including the Preliminary Findings (10 November 2022) of the UN Special Rapporteur, Professor Dr Alena Douhan, pursuant to her mandate in United Nations General Assembly Resolution 27/21 (3 October 2014). That UNGA Resolution contains a recital:

*Recognizing that unilateral coercive measures in the form of economic sanctions can have far-reaching implications for the human rights of the general population of targeted States, disproportionately affecting the poor and the most vulnerable classes.*

The HRA

3. The Secretary of State accepts that the 2019 Regulations are required to be made, maintained and implemented in accordance with the Human Rights Act 1998 duties not to act incompatibly with the Convention rights scheduled to the HRA. The Explanatory Memorandum contained a statement of compatibility, giving the Secretary of State's view that compatibility had been secured (§5.1). But it is common ground that compatibility is ultimately a question of law for the Court.

Witness Statements and Interveners

4. I grant the Claimants permission to rely on their latest witness statements dated 29 September 2023, 30 September 2023 and 6 October 2023. I also grant the applications for permission pursuant to CPR 54.17 and PD54A §12.4(3) for Baroness Cox, Bishop Dr Rowan Williams, Peter Ford and Jonathan Steele ("the Interveners"), to intervene in the proceedings in support of the claim, by way of their written witness statements. My Order reflects this. If the Interveners wish the Court to consider allowing any different form of participation, they will need to apply in writing on notice for enlarged permission, giving the specificity required by CPR PD54A §12.4(2)(3). I have read and considered all the materials. I relied on the advocates to help me navigate the 4427-page bundles of authorities.

Issues

5. The questions I have to decide at this stage are limited: (1) is there any arguable ground of claim? and, if so (2) is judicial review or statutory review the appropriate

proceeding? That is the sensible sequence. It is appropriate to test the viability of the grounds, given that (a) the Claimants have chosen judicial review with its permission filter and (b) had they chosen statutory review there would have been an application to strike out the claim on non-viability grounds.

### The General Grounds

6. I am going to refuse permission for judicial review on all of the general grounds which relate to the making and maintaining of the 2019 Regulations as a whole, and to general or specific civilians in Syria as the victims of breaches of international law. In my judgment, none of these general grounds is properly arguable with a realistic prospect of success. I will explain briefly why.
7. The Claimants have raised a series of arguments about the lawfulness of the 2019 Regulations, and of the refusal to revoke them (s.45 of the 2018 Act). The Claimants rely on the prescribed purposes (s.1(1)(2) of the 2018 Act) and the statutory duty for sanctions regulations to state their purpose or purposes (s.1(3)). These points are not, in my judgment, arguable. The purposes of the 2019 Regulations are spelled out in regulation 4 of the 2019 Regulation, compliant with the (mandatory) statutory duty to state them. The reasoned basis for concluding that these meet the conditions in s.1(2) of the 2018 Act is spelled out in the s.2(4) Report. The identification of purposes is an evaluative judgment for the Minister, as to whether it is appropriate to make regulations for the prescribed purposes, and as to what the Minister considers would be achieved or promoted (ss.1(1)(2)).
8. The Claimants have raised a series of arguments about the 2019 Regulations, in essence, as involving (i) non-compliance with “international obligation[s]”, (ii) “terrorism”; (iii) “gross violations of human rights”, (iv) non-compliance with “international human rights law”, (v) failure of “respect for human rights”, and (vi) non-compliance with “international humanitarian law”. All of the words and phrases in quotations are within the permissible statutory purposes in s.1(1) and (2), in the sense that sanctions regulations can be adopted for purposes of compliance with an “international obligation”, “further prevention of terrorism”, accountability for or deterrence to “gross violations of human rights”, promoting compliance with “international humanitarian law” or “respect for human rights” or “international humanitarian law”. I accept Dr Al-Ani’s submission that it is at least arguable that sanctions regulations which demonstrably perpetrate the very actions against which Parliament has such regulations can permissibly protect would be ultra vires the s.1 power. But, leaving aside narrow and specific points to which I will come, I cannot accept as arguable with a realistic prospect of success that the 2019 Regulations – or their non-revocation – does perpetrate any of these.
9. The 2019 Regulations have as their stated purposes (regulation 4): to encourage the Syrian regime to refrain from actions, policies or activities which repress the civilian population of Syria; and to participate in negotiations in good faith to reach a negotiated political settlement to bring about a peaceful solution to the conflict in Syria. It is not arguable with any realistic prospect of success that the 2019 Regulations involve (i) non-compliance with “international obligation[s]”, (ii) “terrorism”; (iii) “gross violations of human rights”, (iv) non-compliance with “international human rights law”, (v) failure of “respect for human rights”, or (vi) non-compliance with “international humanitarian law”.

10. Nor, for the purposes of the Claimants' reliance on s.51 of, and Schedule 8 Articles 6 and 7 to, the International Criminal Court Act 2001, is it arguable with any realistic prospect of success that the 2019 Regulations constitute inhumane acts intentionally causing great suffering as part of a systematic attack directed against a civilian population; or a measure deliberately inflicting conditions of life calculated to physically destroy a national group. The same is true of the 2019 Regulations constituting, for the purposes of the Terrorism Act 2000, action creating serious risk to the health or safety of the public, designed to influence a government or intimidate the public, made for the purpose of advancing a political religious racial or ideological cause. I can leave aside questions as to whether the 2000 Act would bind the Crown. I can also leave aside questions whether the Administrative Court would be an appropriate forum to rule on an issue of criminality.
11. The Claimants raised a series of points about the international human rights contained in the International Covenant on Civil and Political Rights (ICCPR), including Article 7 (protection from torture, inhuman and degrading treatment and punishment). The reason why this, and not the equivalent HRA Convention right (Article 3 of the ECHR) was being invoked, was because of extra-territoriality. The Claimants accept that an HRA Article 3 claim to challenge the 2019 Regulations, identifying Syrian civilians as victims of Article 3 violations, could not succeed. That is because the ECHR Article 1 "jurisdictional" reach, mirrored by the HRA, would not have this kind of extra-territorial nature. The ICCPR, says Dr Al-Ani, has no such restriction. ICCPR extra-territoriality extends to any state act with effects outside its territory. This is the consequence of the recognised "universal" protection of human rights including non-derogable so-called 'jus cogens' superior rules (Kadi Case T-315/01 §§230-231) and the general conclusion in The Advisory Opinion of the International Court of Justice in the Case of Construction of a Wall (9 July 2004) at §111. ICCPR breaches would be cognizable in this Court, whether in the proper interpretation and application of the scope of the 'vires' of s.1, or because the Secretary of State's decision letter claimed that the 2019 Regulations were compatible with international law obligations, or otherwise. It is sufficient, he emphasises, that this analysis is arguable.
12. I cannot accept, even arguably, that the ICCPR rights have the extra-territorial reach attributed to them. In Kadi the assets were frozen in the EU by EU instrument (§136). Neither a non-derogable human right, nor a universal human right, answers the question of the territorial extent of a state's accountability. The Wall Advisory Opinion cannot bear the weight being placed on it. It says the ICCPR is "applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory". The concept is "jurisdiction", as with Article 1 of the ECHR and the HRA. There was "jurisdiction" because Israel was "occupying power" (§112). I was shown no case saying or suggesting that ICCPR extra-territoriality extends to any state act with effects outside its territory; nor that sanctions regimes engage such a jurisdictional reach. This is fatal to the viability of this part of the claim. I can leave aside the additional problems which could arise as to invocation of the ICCPR: see eg. R (AB) v SSJ [2021] UKSC 28 [2022] AC 487 at §§61-67.
13. The Claimants placed a specific reliance on Article 1(2) of the ICCPR. This refers to the rights of "peoples" to dispose of natural wealth and resources. This has been understood as a "collective" right (see eg. Kitok v. Sweden, Communication No.

197/1985, 27 July 1988 §6.3). There is an HRA issue about the Claimants' inability to make transfers of money to family members, to which I will return.

### Travel

14. One express and deliberate feature of the 2019 Regulations operates to prohibit any direct flights between the UK and Syria. As to the HRA-compatibility of that measure, I accept that the claim has no realistic prospect of success: (1) as a general restriction satisfying principles of justification and proportionality (see In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32 [2023] AC 505 at §35); (2) approached with recognition of the latitude afforded to, and institutional position of, the primary decision-maker (R (Lord Carlile) v Secretary of State for the Home Department [2014] UKSC 60 [2015] AC 945 at §34).

### Visas

15. One feature of the judicial review grounds is a complaint that the Claimants were denied family contact by reason of "refusing to grant any [family] member a visa to visit them in the UK". The Secretary of State's consistent position (since the summary grounds on 5 July 2023) has been that: "To the extent that the Claimants (or members of their family) wish to challenge such refusals, the appropriate target of review is those decisions". If there is any viable HRA challenge, by any victim of a Convention rights violation, I am satisfied that it could be pursued by seeking to challenge (a) a refusal of a visa; or (b) the absence of arrangements to apply for a visa. This is no viable basis for challenging the 2019 Regulations.

### The Arguable Grounds

16. I am going to grant permission for judicial review on two narrow HRA grounds, relating specifically to (i) transferring money (remittances) and (ii) sending letters (correspondence). On those grounds, the Claimants are the claimed victims of what are said to be violations of their own Article 8 rights. In relation to transferring money, they have added reference to the inability to be transferees of monies realising their Syrian assets, and they have added reference to their Article 1 Protocol 1 property rights. The Claimants are in the UK. They say they have no way to send any remittance from here to their family members in Syria (or receive any remittance), and no way to send any letter or package either. They attribute this effect, in their evidence, to the Regulations.
17. I am satisfied that these narrow human rights grounds are arguable and warrant a substantive hearing. I emphasise that the only view which I have arrived at is that the claim is arguable.

### Remittances

18. This has been at the heart of the case since the pre-action correspondence, when it crystallised in the contention in a letter before claim (13 April 2023) that the Secretary of State had "failed to address the Claimants' grievances of their inability to assist their families in Syria in being denied the right to transfer any money at a time when these families are subject to inhumane conditions of lack of electricity and shortage of fuel and hardship of employment ..."

19. The 2019 Regulations include targeted financial sanctions (regulations 12 to 15) which prohibit making funds or economic resources available to or for the benefit of a designated person. There are then sectoral financial sanctions, in particular regulation 16 which prohibits any UK institution from opening a bank account or establishing a “correspondent banking relationship” (ie. an agency arrangement) or joint venture with a Syrian financial institution.
20. The Secretary of State accepts that the combination of the terms of the 2019 Regulations and steps taken by financial institutions to avoid risk of their breach has made the transfer of money by individuals to Syria practically very difficult (the Claimants say: impossible).
21. Mr Birdling’s position is that, although there is some recognised scope for Article 8 to protect an ability to make transfers of money to family members (cf. Yigit v Turkey (2011) 53 EHRR 25 at §95), the available routes of are in substance limited to Article 14 (protection from discrimination) and A1P1 (property rights protection, albeit with the family dimension informing the question of “excessive burden”). In any event, there is clear justification, he submits, as a general restriction satisfying principles of justification and proportionality (Abortion Services), recognising the latitude and institutional position of the primary decision-maker (Carlile). This may prove to be correct, but in my judgment the claim to the contrary is arguable. One factor may be that these are said to be carefully targeted measures with humanitarian flexibility. Another factor may be that the practical impossibility of making a remittance can be said to be a restriction and impact greater than that which was designed into the Regulations, reasoned by the decision-maker and confronted when designing and scrutinising the instrument. The Claimants’ family members in Syria are not designated persons. A bank transfer would not be an agency banking relationship. Having said that, other and later reasoning may be forthcoming and potent: cf. Dalston Projects Ltd v Secretary of State for Transport [2023] EWHC 1885 (Admin) at §79; Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs [2023] EWHC 2121 (Admin) at §§95-96. What is the correct prism: Article 8; Article 14; A1P1? Is the correct analysis a “negative” or a “positive” human rights obligation, or neither, or both? Is there a relevant consequence and, if so, can the relevant consequence be justified as necessary and proportionate? Would this impose an impossible or disproportionate burden? The issues should be fully argued out.

### Correspondence

22. This, as I see it, is a related issue. It is, on the face of it, a further step away from the design of the Regulations. They contain no such prohibition. One question which has arisen is whether the practical impossibility is a consequence of the design of the 2019 Regulations. The Claimants say this is the effect of the 2019 Regulations and risk-avoidance by the Royal Mail, just as the impossibility of remittances is the effect of the 2019 Regulations and risk-avoidance by UK banks. The Secretary of State says the evidence is that this is all entirely independent action by the Royal Mail. There are – again – issues about the applicability of Article 8, about negative and positive obligations, and about justification and proportionality. The voluminous authorities bundle includes some cases about correspondence and state action to facilitate it. One feature of such cases concerns alternative forms of communication (eg. email): cf. Ciupercescu v Romania (No. 3) (Applications nos. 41995/14 and 50276/15) §§104-111. The Secretary of State says that there is no HRA violation. Again, that may

prevail, but I do not think there is a clean knock-out blow. The issues should be fully argued out and determined, together.

### Statutory Review

23. Finally, I turn to the procedural point. Mr Birdling confirmed that – if the position were reached that the Court found any issues in the claim to be properly arguable – the Secretary of State would not resist the grounds on which permission has been granted then being transferred (CPR 54.20) to continue as a statutory review, and with the judicial review claim stayed with liberty to restore. He described that as an appropriate pragmatic course. I agree and that is what I will do. The case can now be stripped back to the materials relevant to the issues which I have found to be arguable.
24. The Secretary of State has said, throughout, that this claim should have been statutory review under section 38 of the 2018 Act, not judicial review. There is a preclusive clause: section 39(5). As it happens, judicial review has the additional filter of a permission-stage hurdle. The making (s.1) and non-amendment or revocation (s.45) of the 2019 Regulations are all decisions in connection with Ministerial functions under Part 1 of the 2018 Act, to fall within s.38(1)(d). So would be any decision to make or not make Guidance (s.43). So, in my provisional view, would be any action or inaction as to any ancillary arrangements regarding facilitation of remittances or correspondence. All of these are decisions attracting the Court’s jurisdiction to set them aside (s.38(4)). The principles and remedies are as for judicial review (s.38(4)(5)). Since the HRA victims would be the Claimants – I have rejected the ICCPR argument – they are “affected” (s.38(3)). The gateway does not apply (s.39(1)) for the restriction on damages to present a problem (s.39(2)(2A)). The relevant rules of court can apply (s.40). The statutory preclusive clause is, on its wording, applicable (s.39(5)). I can, provisionally, see no rule of law issue or gap as to effective judicial protection (the concept central in the Kadi case, culminating in the decision in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P dated 18 July 2013). The Secretary of State accepts the applicability of the HRA. The rationale for a judicial review claim being stayed is in case any point arises which presents any impediment to what the Court would otherwise have done, in which case the position can be addressed.

### Order

25. After circulation as a confidential embargoed draft, in readiness for a hand-down on 14 November 2023. That hand-down had to be rescheduled, after the case missed publication in the Court’s cause list. But I released a non-confidential non-embargoed version of the judgment to the parties on the originally intended hand-down date. The parties cooperated with each other and the Court.
26. I raised the question of venue. I have received brief observations from the parties. My provisional view is that the case should continue to be case-managed from Manchester, and the substantive hearing conducted heard here, as was the permission hearing, and as is requested by the Claimants. However, I am giving the Secretary of State liberty to make an application for a venue determination, with which I am minded to deal on the papers, by a mechanism which – if pursued – would allow all parties a suitable time-frame to provide fuller information and representations.
27. The Order which I have made is as follows:

**Application for Permission to Apply for Judicial Review.** (1) Permission is granted pursuant to CPR 54.17 and PD54A §12.4(3) for Baroness Cox, Bishop Dr Rowan Williams, Peter Ford and Jonathan Steele to intervene in the proceedings in support of the claim by way of their written witness statements. (2) Permission to apply for judicial review is granted to the extent set out at paragraph 16 of the Judgment, that is in respect of the Claimants' grounds contending that they are themselves victims of violations of either Article 8 ECHR and/or Article 1 Protocol 1 ECHR by reason of their inability to (a) remit money to (or receive any remittance from) close family members in Syria and/or (b) send correspondence to Syria ("the Approved Grounds"). (3) The Claimants' claim insofar as it relates to the Approved Grounds shall proceed as an application for statutory review in accordance with section 38 of the Sanctions and Anti-Money Laundering Act 2018 and the applicable provisions of CPR 79. (4) The application for judicial review in respect of the Approved Grounds shall be stayed with liberty to restore. (5) Permission to apply for judicial review is otherwise refused, and the claim (other than as it relates to the Approved Grounds) is dismissed.

**Statutory Review – Case Management Directions (CPR 79.10).** (6) The claim insofar as it relates to the Approved Grounds shall be listed in conjunction with Counsel's clerks for substantive hearing before a High Court Judge of the Administrative Court with a time estimate of one day (with an additional one day of judicial pre-reading) on or after 13 June 2024. (7) The Defendant shall file and serve his response to the Approved Grounds as required by CPR 79.11(1) by 4pm on 23 February 2024. (8) The Claimants shall (if advised) file and serve any application under CPR 79.11(5) by 4pm on 11 March 2024. (9) Any application filed and served in accordance with paragraph (8) shall be determined as follows: (i) The Defendant shall file and serve his response, and (if advised) any application under CPR 79.11(8), by 4pm on 25 March 2024. (ii) The application (and any application under CPR 79.11(8)) will then be placed before a Judge on 26 March 2024 (or as soon as possible thereafter) for determination in accordance with CPR 79.11(7). That determination shall be made (unless the Court directs otherwise) without a hearing. The Judge determining that application will also fix the time for the Defendant to comply with any order made under CPR 79.11(7). (10) The Claimants shall (if advised) file and serve any further evidence in respect of the Approved Grounds in accordance with CPR 79.12 by 4pm on 15 April 2024. (11) If the Claimants file and serve further evidence in accordance with paragraph (10), the Defendant shall (if advised) file and (subject to any application under CPR 79.12(3) made before that time) serve any reply evidence by 4pm on 6 May 2024. (12) The parties shall, by 4pm on 13 May 2024, agree the contents of the hearing bundle and file it with the Court. An electronic version of the bundle shall be prepared and lodged in accordance with the Guidance on the Administrative Court website. The parties shall, if requested by the Court lodge a hard-copy version of the hearing bundle. (13) The Claimants shall file and serve their skeleton argument no later than 21 days before the hearing date. (14) The Defendant shall file and serve their skeleton argument no later than 14 days before the hearing date. (15) The parties shall agree the contents of a bundle containing the authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared in accordance with the Guidance on the Administrative Court website. The parties shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic version of the bundle and if requested, the hard copy version of the bundle, shall be lodged with the Court no later than 7 days before the hearing date.

**Venue.** (16) Subject to paragraph (17) the venue for the statutory review including the substantive hearing in paragraph (6) will be the Administrative Court in Manchester. (17) If so advised, the Defendant has liberty to apply in writing on notice within 7 days of this Order for transfer to London, with a further 7 days for the Claimants to respond and 3 further days for the Defendant to reply.