Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11357/2015
AA/12746/2015
AA/12747/2015
AA/12748/2015
AA/12749/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 May 2017	**On 30 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M F F
F F A F
M S M F
I A G M F
R S M F
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Ms T Melvin, Home Office Presenting Officer
For the Respondent: Ms E Harris, Counsel instructed by Nag Law Solicitors

DECISION AND REASONS

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1. This matter was last before me on 6 February 2017 when I determined that there had been an error of law in the decision of the First-tier Tribunal, in consequence of which I set aside the Tribunal's disposal under Article 3 of the European Convention on Human Rights. For convenience, the error of law determination is included as an appendix to this Decision.

Background

2. The principal appellant is a citizen of Sri Lanka, born on [ ] 1968. He arrived in the United Kingdom in 2007 in possession of a valid student visa. His wife secured a visa to join him the following year, as did their three children in 2011. The appellant's leave was extended until 30 January 2013. Prior to its expiry, but some five years after entering the United Kingdom, he claimed asylum in April 2012.

3. In 2012 the appellant had been convicted in Sri Lanka of an offence concerning the unlawful detention of a child and sentenced to a period of imprisonment of three years. The trial had proceeded in the appellant's absence although he had the benefit of legal advice and representation for at least part of the criminal process.

4. The appellant's claim for asylum was rejected as he was excluded from protection under Article 1F(b) of the Refugee Convention on the basis that he had committed a serious non-political crime in Sri Lanka. His claim for humanitarian protection was similarly refused, under rule 339D(v) of the Immigration Rules. There is no appeal against these determinations and the findings of the First-tier Tribunal have been expressly preserved.

5. The sole issue upon which the First-tier Tribunal's decision falls to be remade concerns the appellant's claim under Article 3. It is submitted that were he to be returned to Sri Lanka he would be required to serve the sentence imposed by the criminal court and that the conditions of his detention in Sri Lanka's prisons would amount to inhuman or degrading treatment.

6. The matter was adjourned to allow the parties to adduce additional evidence, including expert reports. The appellant submitted a bundle running to 100 pages. Notwithstanding its late service, no objection was taken by Mr Melvin on behalf of the respondent who indicated he was not disadvantaged. There was no further evidence filed by the respondent. Instead, Mr Melvin handed up written submissions. Both counsel were content that the matter be dealt with on submissions, without the calling of any live evidence. The submissions were directed solely to the material in the appellant's bundle. All page references hereafter in square brackets are to those of that bundle, save where the contrary is stated.

7. It was accepted by both parties that my determination in respect of the appellant would be dispositive of the parasitic appeals of his wife and children.

The appellant's submissions

8. Ms Harris, for the appellants, took me to various parts of the material in appellants' bundle concerning:

   i. the conditions in Sri Lankan prisons generally; and
   ii. the likely treatment of the appellant upon his return to Sri Lanka and subsequent detention by the civilian authorities to serve his sentence.

   It was conceded by Ms Harris that the appellant would not be of interest to the security forces in the political context envisaged in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.

   a. Prison conditions in Sri Lanka generally

9. On the first issue, Ms Harris made reference to the Sri Lanka COI Compilation dated December 2016 prepared by the Austrian Red Cross [pp 50 et seq]. She referred to the US Department of State Human Rights 2015 [pp 70-71] which recorded that "prison conditions were poor due to old infrastructure, overcrowding, and shortage of sanitary and other basic facilities". It noted [p 70] that the commissioner of prisons estimated that the prison population exceeded capacity by some 60%.

10. The Compilation quoted from the preliminary observations (May 2016) of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment [p 71] in similar terms to the final Report (December 2016) quoted below. The prefatory comment reads: "With regard to the treatment of prisoners by staff in penitentiaries and remand prisoners, I note with satisfaction that in conducting my interviews I did not receive any serious complaints", but see the concern (below) that prisoners may have been discouraged from speaking to the delegation.

11. The Rapporteur also records having observed levels of population exceeding capacity by well over 200 or 300 per cent [p 71], and observes that the Sri Lankan government has indicated that Welikada prison will be closed and a new one built in Tangelle but, as at 2015, this was not yet in the planning stages [p 72].

12. The Compilation notes that the Sri Lankan NGO Collective (13 October 2016) concludes at 5.35 that "prison conditions need immediate attention to ensure that prisoners are not treated in a cruel, degrading or inhuman manner", that meals given to prisoners lack nutrition and that there is also a lack of medical facilities and there are no recreational activities available for the prisoners (5.35.1, 5.35.3) [p 72]. However, the Special Rapporteur reported elsewhere that nutrition was "adequate".

13. A newspaper report (*Daily News,* 9 June 2016) is quoted in the Compilation [p 73] quoting a prison doctor in Welikada recording a high level of depressive illness and the lack of a doctor-on-call. It indicates there is a lack of hygiene and that prisoners suffer from physical and mental injury, as well as physical and sexual attacks. [p 73]. The Sri Lankan NGO Collective (5.32) suggests that prison doctors have inferior training. [p 72]. They cannot send a victim of torture to a junior medical officer without permission from the prison management, and prison officials are not bound to follow a doctor's instructions [p 74]. Lack or inadequacy of medical care is noted in the report of the UN Special Rapporteur (below) at paragraphs 64 *et seq* [p 38].

14. The Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment (22 December 2016) [p 28] rehearses much of the content of the preliminary observations (May 2016) cited above. Ms Harris took me to paragraph 5 [p 30] and the Rapporteur's concern that a number of detainees had reported that that they had been warned not to speak to the delegation about their treatment and may have been less than forthcoming as a result. She also referred me to paragraph 52 recording the apparent failure of the Prisons Department to supply figures for the actual capacity of detention facilities [p 37]. Paragraph 53 of the report states:

    "Although the Special Rapporteur did not receive any reports of ill-treatment by corrections staff, he found prison conditions to be inhumane, characterised by very deficient infrastructure and pronounced overcrowding. There was an acute lack of adequate sleeping accommodation, extreme heat and insufficient ventilation. Overpopulation also results in limited access to medical treatment, recreational activities and educational opportunities. These conditions combined constitute in themselves a form of cruel, inhuman and degrading treatment."

15. The Special Rapporteur observed extreme levels of overcrowding with populations exceeding capacity by 200 or 300 per cent in, for example, Vavuniya remand prison: paragraph 56 [p 38]. Detainees are forced to sleep back-to-back on concrete floors and staircases for lack of space. Reference is also made to crumbling nineteenth century prisons in Colombo, which Ms Harris submitted was the likely region for the appellant's incarceration. Ms Harris took me to paragraph 72 which concerned a lack of judicial oversight for remand prisoners [p 40].

16. Ms Harris referred me to the comments of the Special Rapporteur, particularly paragraph 112 [p 45]:

    "Conditions of detention amount to cruel, inhuman or degrading treatment owing to severe overcrowding, insufficient ventilation, excessive heat and humidity, and the denial of adequate access to health care, education, vocational training and recreational activities."

She also pointed to the recommendations at 117(a) for urgent repair and upgrade of buildings and at 117(b) for ensuring compliance with minimum standards [p 45].

17. Citing the 2016 Country Report on Sri Lanka produced by the US Department of State [p 9], Ms Harris made reference to the section entitled 'Prison and Detention Center Conditions' [pp 11-12]. This recorded an estimate from the Sri Lankan authorities of the system's capacity being exceeded by 50 per cent. It noted 74 deaths of prisoners, the majority of which were natural causes, with some three suicides.

18. Finally, Ms Harris took me to the Home Office's Sri Lanka Operational Guidance Note (December 2011) which, as Mr Melvin conceded, remains current and includes the following [p 84]:

> "**3.9.8 Conclusion** Overcrowding and unsanitary conditions which amount to degrading treatment for 'ordinary' detainees have been recorded in some prison facilities and case owners should therefore consider carefully whether the threshold is likely to be breached in individual cases, taking into account any objective material available on potential places of detention. Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture."

19. Ms Harris submitted that the inadequacy of Sir Lanka's prisons has been on the Home Office radar since at least 2011, and invited the Tribunal to find that the situation had deteriorated in the subsequent years.

20. Ms Harris submitted that there was ample evidence from the material relied upon, especially the Special Rapporteur's findings, for the Tribunal to be satisfied that there would be a likely violation of Article 3. Further, she states that as the respondent has furnished no material to indicate where the appellant is likely to be held, it cannot be assumed that it would be in one of the newer or better prisons. In all likelihood the appellant would be kept at a prison in Colombo (there being no prison in his home town), and there was nothing to suggest that prison conditions in Colombo were any better than the generality of facilities researched in the material.

b. likely treatment of appellant when arrested on return

21. Ms Harris conceded that as the appellant had already been subject to investigatory process, criminal trial and sentence, the observations in the material regarding harsh treatment of criminal suspects and the extraction of confessions (for example the section on the torture and ill treatment of criminal suspects in the Compilation [p 56]) are not of direct relevance. She nonetheless relied on personal vendettas and the extortion of funds when individuals are taken into custody as noted in the

Human Rights Watch World Report of 2016, quoted in the Compilation [p 57]. She submitted that the position would be analogous with the appellant taken into custody in order to serve his sentence. She took me to the report of the Special Rapporteur (above) which recorded at paragraph 22 that the practice of torture at the investigatory stage was less prevalent today [p 33]. She submitted that the appellant would have to pass through the Criminal Investigations Department on and after his arrest and that such organisation had a history of and reputation for acting with impunity.

22. Ms Harris did not rely on any case law or other decisions of this Tribunal.

The respondent's case

23. No material was placed before me on behalf of the respondent. Mr Melvin relied upon his written submissions, which he augmented orally. He submitted that there was no evidence that the appellant might be at risk of torture on his return. A distinction should be made between the security services, the Criminal Investigations Department, and the civilian police. Only the latter would have an interest in the appellant for the purpose of serving the sentence imposed in his absence after due criminal process. There was no evidence of the police acting with impunity.

24. Mr Melvin submitted that it was unlikely the appellant would suffer any ill-treatment in completing his sentence. He referred me to the 2016 Country Report on Sri Lanka produced by the US Department of State which recorded [p 12]:

> "*Independent Monitoring:* The Prison Welfare Society was the primary domestic organisation conducting visits to prisoners and has a mandate in regulations to examine the conditions of detention for prisoners and negotiate their complaints with the individual prison superintendents and the commissioners of prisons.
> *Improvements:* The Prison Department sought to address overcrowding by moving several prisons out of urban areas into more spacious, rural locations. For example the Department moved Jaffna Prison outside of the city."

25. Mr Melvin submitted that there was little evidence that the appellant would suffer torture or extortion and that, if required, appropriate steps could be taken to negotiate safe passage into the prison system via the civilian authorities. Any potential difficulties at the airport would fall away.

26. Mr Melvin rejected the suggestion of 300% overcrowding and drew attention to the establishment of newer prisons as evidenced by the US Department of State Report. He indicated that there was a rolling programme of improvements in prisons and prison conditions. He submitted that the evidence did not bear out Ms Harris' contention that conditions had worsened since the Home Office Operational

Guidance Notes of 2011. He drew my attention to the Release on Licence Scheme, the operation of which is set out in an academic paper included in the appellant's bundle of material: J. Abeysirigunawardana, 'Overcrowded Prisons and Present Practices and Experience in Relation to Community-Based Alternatives to Incarceration' [p 78].

27. Mr Melvin noted that the appellant was relatively affluent and had retained a lawyer to represent him in the criminal process. He suggested that the appellant could use his wealth to ensure he was sent to one of the better prisons and to secure more favourable treatment but, when directly questioned by me, conceded that there was no evidence before the Tribunal to support any correlation between affluence and deployment or treatment.

28. Mr Melvin indicated that family visits were available, the Special Rapporteur recommending that they take place more frequently [p 47]. He took me to a number of parts of the material in the appellant's bundle: an information pack from the British High Commission, Colombo for British prisoners in Sri Lanka (June 2015) states:

    "Conditions within prisons are difficult because of the overcrowding and the heat. However, inmates do receive appropriate medical attention and are provided with a balanced diet."

    The pack also records that a medical practitioner visits all penal institutions on a given date to attend the needs of prisoners. More serious conditions are referred to doctors in a public hospital outside the prison. [p 73].

29. Mr Melvin's written submissions adopted paragraphs 40 *et set* of the Respondent's Detailed Reasons for Refusal of Leave annexed to the asylum decision letter of 4 August 2015. This recorded the regular use of amnesties authorising the release of various categories of prisoners on an *ad hoc* basis such as public holidays. Referring, amongst other things, to the US State Department's 2014 Country Report, paragraph 45 asserted that there is a visible effort being made for those serving short jail sentences: whilst conditions differ, this does not constitute a breach of Article 3.

30. Mr Melvin's written submissions were that **GJ and Others** had no application to the particular facts of this case as the appellant's crime was non-political and had nothing to do with the Liberation Tigers of Tamil Eelam (LTTE): there was no risk of him being stopped at the airport in the circumstances envisaged. The security services will have no interest in him: the arrest warrant is a matter for civilian law enforcement not relating to political offending.

31. Mr Melvin submitted that prison conditions in Sri Lanka are not so poor as to engage Article 3, and that old infrastructure is being modernised, and

overcrowding is being addressed. Steps are being taken to implement the recommendations of the Special Rapporteur [pp 46-47]. He commente on overcrowding in United Kingdom prisons with inmates locked up all day not enjoying free association.

Findings and conclusions

32. The burden of proving a likely violation of Article 3 lies on the appellant, and falls to be discharged on the balance of probabilities. Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

33. It must be established by the appellant that there exist substantial or serious grounds for believing that, if the appellant were to be returned to Sri Lanka, he would face a real risk of being subjected to torture or inhuman or degrading treatment. Domestic jurisprudence, together with that of the European Court of Human Rights, is of limited utility in determining these matters as each case is fact specific. Hence counsel, in my view wisely, did not cite case law in their submissions, save to acknowledge that **GJ and others** did not assist as it was addressed primarily to the situation of Tamil activists.

34. I note, by way of example only, the relatively recent judgment of the Grand Chamber of the European Court of Human Rights in **Muršić v Croatia** (Application no. 7334/13), judgment 20 October 2016. In the following paragraphs the Court comments on the considerations relevant to the assessment of whether a violation of Article 3 is made out.

> **97.** Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, Ireland v. the United Kingdom, 18 January 1978, § 162, Series A no. 25; Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006-IX; Idalov, cited above, § 91; and also, Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002-VI).
>
> **98.** Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, Idalov, cited above, § 92; and also, Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002-III; Ananyev and Others, cited above, § 140; Varga and Others, cited above, § 70). Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (see Bouyid v. Belgium [GC], no. 23380/09, § 81, ECHR 2015).
>
> **99.** In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable

element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; Idalov, cited above, § 93; Svinarenko and Slyadnev, cited above, § 116; Mozer v. the Republic of Moldova and Russia [GC], no. 11138/10, § 178, ECHR 2016; and also, Valašinas v. Lithuania, no. 44558/98, § 102, ECHR 2001-VIII; and Ananyev and Others, cited above, § 141).

35. I am mindful that certain of the extracts relied upon by the appellant deploy terminology such as 'inhuman and degrading treatment' adopting the vocabulary of Article 3. This Tribunal cannot abrogate its function to third party opinion, however expert and experienced its source. The objective assessment of specialist international bodies, NGOs and state authorities command due respect and are to be afforded the weight they deserve, but the question of whether there are substantial or serious grounds for believing that the appellant would face a real risk of torture or inhuman or degrading treatment is ultimately one for me to determine having regard to the totality of the evidence placed before me and the particular facts and circumstances relating to the appellant.

36. The cumulative effect of the material which I was invited to consider is to the effect that prison conditions in Sri Lanka are undoubtedly harsh and there is considerable overcrowding. I take fully into account that the authorities may have been less than candid or forthcoming in providing information to international agencies, and that prisoners may have been discouraged from raising complaints when afforded an opportunity to do so.

37. The most severe criticism is directed to the conditions of remand prisoners or individuals undergoing investigatory process. The appellant falls into neither category, having already been convicted and sentenced. In consequence it is appropriate to disregard those parts of the evidence.

38. There is no specific evidence as to the treatment of convicted criminals upon their arrest in order to serve a sentence which has already been imposed and nothing to support argument by analogy from those being investigated by the authorities. I can find nothing in the material which even begins to discharge the burden of proof which lies on the appellant in relation to this second limb of Ms Harris' submissions under Article 3. The mere fact that the appellant would be taken into custody in order that he serve his sentence, would not, in my assessment, amount to serious grounds for believing that the appellant would face a real risk of torture or inhuman or degrading treatment.

39. The gravamen of this appeal, however, concerns prison conditions in Sri Lanka generally. The respondent adduced no evidence as to the particular prison or

prisons where the appellant is likely to serve his sentence, and it is therefore not open to the Tribunal to proceed on the assumption that it would be in one of the more modern facilities which are gradually being introduced. Similarly, Mr Melvin's submission that the appellant would be able to use his wealth to secure a place at a better institution or to guarantee more favourable treatment, is unsupported by any evidence and I have no hesitation in rejecting it.

40. Taking the material as a whole, the following points seem to emerge. Undoubtedly prison conditions on Sri Lanka are harsh and there are significant levels of overcrowding. Nonetheless, the underlying trend is of improving facilities including the replacement of certain prisons with modern facilities. There is a lengthy lead time in constructing new prisons and wholesale replacement remains some considerable time away, measurable in years rather than months.

41. There are medical facilities even in the older prisons, albeit with limitations, and nutrition is considered to be adequate. Sleeping conditions for prisoners are far from ideal and sanitary provision is poor. There appear to be difficulties in relation to health care, education, vocational training and recreational activities. The information pack provided by the British High Commission dated June 2015, however, gives a candid and balanced account. The evidence also suggests that there is a possibility of release on licence so that the period of the appellant's actual incarceration may well be less that the three year sentence imposed.

42. Proceeding on the basis that the appellant would not receive preferential treatment nor be allocated to one of the newer prisons under construction, I am not satisfied that there are substantial or serious grounds for believing that the appellant would face a real risk of torture or inhuman or degrading treatment while serving his prison sentence in Sri Lanka. Inevitably there will be a high degree of suffering and humiliation resulting from his incarceration in an overcrowded facility. The materials before me suggest that the appellant's dignity will be sufficiently respected, not least through medical care and family visits, however imperfect. There is nothing to suggest actual bodily injury or intense physical or mental suffering.

43. It therefore follows that I am not satisfied that the appellant's return to Sri Lanka would constitute a violation of the appellant's rights under Article 3 of the European Convention on Human Rights. Accordingly his appeal under this ground is dismissed. All other grounds were dismissed by the First-tier Tribunal, and those findings have been preserved.

Notice of Decision

The human rights ground which was before the First-tier Tribunal is remade as follows:

(1) The appellant's appeal under Article 3 of the European Convention on Human Rights is dismissed;

(2) In consequence, and for the avoidance of doubt, the appeals of the second, third and fourth appellants are similarly dismissed.

<u>Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008</u>

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill* Date 26 May 2017

Deputy Upper Tribunal Judge Hill QC

Appendix

ERROR OF LAW DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Fenoughty which was promulgated on 5 September 2016. The appeal concerns a citizen of Sri Lanka and there are parasitic appeals in relation to his wife and their children. The principal appellant (as I shall refer to him throughout this decision) pursued a claim for asylum and humanitarian relief arising out of his alleged involvement with the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka.

2. The decision in the First-tier Tribunal is careful and detailed. It recites what was contained in the refusal letter and then goes through the evidence that was before the Tribunal, which is analysed with care. The judge then looks at the issue under the Immigration Rules considering in turn asylum, humanitarian protection and Article 3 of the European Convention on Human Rights.

3. There are substantial concerns voiced in the First-tier Tribunal as to the credibility of the appellant, including a number of significant inconsistencies within the evidence he gave which led to the Judge rejecting all but one of the appellant's claims. There is no challenge by way of cross-appeal in relation to the judge's disposal of these matters.

4. Towards the conclusion of the decision the judge focuses upon the European Convention of Human Rights, and as I observed during oral arguments this morning, the consideration of Article 3 is surprisingly brief and cursory when set against the lengthy, detailed and thorough consideration which was given to the other aspects of this case.

5. Permission to appeal was granted and two substantive arguments have been advanced before me which, it is submitted, both individually and collectively amount to material errors of law.

6. The first is in respect of the misapplication by the judge of the decision in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. This judgment is discussed in paragraph 90 of the decision and certain paragraphs of the headnote are set out.

7. The second matter raised is an alleged failure on the part of the judge to distinguish between prison conditions which may apply in relation to an individuals detained pursuant to ordinary criminal process and mistreatment by the security services in relation to LTTE activities.

8. On both of these matters, the consideration given by the judge was less than adequate. There is no discussion of the detailed material within **GJ** nor is there any reference to such evidence as may have been before the First-tier Tribunal as to the state of prison conditions for criminals serving their sentence. Parties in immigration proceedings are entitled to know the basis upon which judicial conclusions are reached and, on these two material matters, they are singularly absent from the decision.

9. Miss Harris, on behalf of principal appellant, submits that even if there is one or more errors of law, they are not material because were one to carry out the detailed analysis of the country guidance and consider other relevant material, it would lead inevitably to the conclusion that the judge had made the proper findings.

10. I do not consider that this is something which can be said with any degree of certainty. The only appropriate course is for this aspect of the case to be looked at afresh and for the decision to be remade. I will say nothing in this decision which might appear to pre-judge the outcome of that later hearing.

11. In the circumstances I find material errors of law for each of the reasons I have outlined above in relation to judge's consideration of Article 3. I preserve all the other findings made in the First-tier Tribunal. The matter will be retained in the Upper Tribunal in order that the decision on Article 3 can be remade. Such redetermination will be based upon such additional material as the Secretary of State and the appellants may serve and file. The matter will be adjourned accordingly.

Notice of Decision

i. Having found material errors of law, the appeal is allowed and decision of the First-tier Tribunal is set aside in relation to the consideration of Article 3 of the European Convention on Human Rights. All other findings of the First-tier Tribunal are preserved.

ii. Appeal adjourned for the decision on Article 3 to be remade.

iii. Matter to be relisted on the first open day after 10 weeks with a time estimate of 1 day, before Deputy Upper Tribunal Judge Hill QC if available.

iv. Any additional evidence, to include expert reports, to be filed no later than 14 days prior to the resumed hearing.

Signed *Mark Hill* Date 6 February 2017

Deputy Upper Tribunal Judge Hill QC