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MK (Tunisia) Judgment

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In 2011, the Court of Appeal gave judgment in *Secretary of State for the Home Department v MK (Tunisia)* [2011] EWCA Civ 333 (“MK (Tunisia)”). The court dismissed the appeal of the Home Secretary against the decision of Mr Justice Collins. The Crime and Courts Bill includes provisions intended to reverse the effect of this judgment. This information sheet provides information about the facts and judgment in MK (Tunisia), and the relevant provisions in the Crime and Courts Bill. The judgment is available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/333.html>

The background facts in MK (Tunisia)

Mr MK, a Tunisian national, came to the UK in 2001 and claimed asylum. In October 2001, he was recognised as a refugee and granted leave to remain in the UK. He was later issued with a refugee travel document. Between 2001 and 2007 he lived in the UK with his wife and daughters. In November 2007, Mr MK was arrested under a European Arrest Warrant issued by an Italian court. Italy sought his extradition from the UK. Mr MK sought to resist his extradition, but in November 2008 he was extradited to Italy. In Italy, Mr MK was charged with various terrorism-related charges. In July 2010, he was acquitted of all these charges, though he was convicted of a charge of falsely procuring (obtaining) a document. As is now accepted by all, that charge did not relate to any terrorism-related offence. The Italian authorities took steps to return him to Tunisia (i.e. the country where he was at risk of persecution). However, the European Court of Human Rights issued a decision to stop the return to Tunisia proceeding.

In 2007 and 2008, when Mr MK had sought to resist his extradition to Italy, he argued that it was not safe to send him to Italy because of the risk that the Italian authorities would return him to Tunisia. The UK authorities had already accepted that he was at risk of persecution in Tunisia. Returning him to Tunisia would violate Article 33 of the 1951 UN Convention relating to the Status of Refugees. It would also violate Article 3 of the 1950 European Convention of Human Rights. The UK courts dealing with Mr MK’s extradition case decided that the Italian authorities could be relied upon not to return Mr MK to Tunisia in breach of these Conventions.

More information as to the facts in Mr MK’s case is set out in ILPA’s submission to the Joint Committee on Human Rights at: <http://www.ilpa.org.uk/data/resources/14418/11.01.21-ILPA-to-JCHR-re-extradition.pdf>

The issue before the Court of Appeal in MK (Tunisia)

In April 2010, several months after Mr MK had been extradited to Italy, the Home Secretary gave notice that she was considering revoking Mr MK’s refugee status on the grounds that “*there are reasonable grounds for regarding him as a danger to the security of the United Kingdom*”. Mr MK sought to resist the revocation (the withdrawal of recognition by the UK) of his refugee status. In

July 2010, a few days after Mr MK was acquitted of all terrorism-related charges (and after Italy's attempts to return Mr MK to Tunisia had been stopped), the Home Secretary cancelled Mr MK's leave to remain in the UK. In doing so, she gave notice that he was only entitled to appeal against that decision from outside the UK. The Court of Appeal explained that the issue before the court was:

- whether Mr MK was entitled to a right of appeal from within the UK; and
- whether Mr MK was entitled to re-enter the UK in order to exercise that right of appeal.

The judgment in MK (Tunisia)

The Court of Appeal decided that the cancellation of Mr MK's leave to remain in the UK fell within the terms of section 3D of the Immigration Act 1971. Section 3D provides that, where someone has his or her leave taken away:

- the leave is to continue in effect for the short period (usually 10 working days) within which the person can exercise a right of appeal from within the UK; and
- the leave is to continue in effect, if the person does bring an appeal from within the UK within that period, until the appeal ends (i.e. is dismissed, allowed or withdrawn).

Accordingly, where the Home Secretary cancels someone's leave, he or she may appeal from within the UK. If the person is outside of the UK when his or her leave is cancelled, he or she should be given an opportunity to return to the UK within the 10 days period to bring an appeal. If the person does so, for so long as the appeal remains outstanding, the person will continue to have leave to remain in the UK. (However, that if the person leaves the UK during the course of the appeal, this will bring the appeal to an end, at which point his or her leave to remain in the UK will cease.)

The Crime and Courts Bill

Clause 25 of the Crime and Courts Bill (HL Bill 4) is intended to reverse the decision of the Court of Appeal in cases where the Home Secretary decides that the person's presence in the UK is "*no longer conducive to the public good*". It is intended that someone, whose leave is cancelled while he or she is outside the UK on the grounds that it is not conducive to the public good to allow him or her to enter or remain in the UK, will only be able to exercise a right of appeal against the cancellation of leave from outside the UK. This will be the case even if the person does manage to return to the UK.

This provision will be especially problematic for refugees and stateless persons. A stateless person may have no entitlement to be or live in any other country if his or her leave to remain in the UK is cancelled. A refugee may have no entitlement to be or live in any other country except for his country of nationality – but this will be the country where he or she is at risk of persecution (e.g. torture or execution). Clause 25 makes no distinction between those who have and those who do not have another country where they can, and can safely, live or return to. Clause 25 will catch those who leave the UK for only a short break (e.g. a weekend visit) and those, such as Mr MK, who are removed from the UK against their wishes. By excluding the person's return to the UK, clause 25 will put refugees at risk of being returned, or forced to return, to their home countries where they face persecution. This may include people, such as Mr MK, whose innocence of offences has been established.