

Diplomatic Agreements, 27.6.3 Pages 499-500

***Othman v Secretary of State for the Home Department* [2009] UKHL 10**

The deportation of terrorist suspects is reviewed by the Special Immigration Appeal Commission. This is in effect a court with judicial powers and procedure. It is authorised to see the closed evidence, relied on by the government but which the deportee and his legal advisors do not see. The decisions of SIAC can be appealed into the “normal” courts only on a point of law. The issue was whether or not SIAC could properly rely on diplomatic assurances when it allowed the deportation of a suspect to a country where, apart from those assurances, there was a real risk of torture or inhuman treatment. The House of Lords, which refused to consider the closed material, allowed the deportation on the grounds that the reliability of the diplomatic assurances was a matter of fact. SIAC had properly considered all the issues relating for and against reliance, its decision was within its reasonable discretion. In particular there was no rule of law that could prevent reliance in such circumstances.

On a second issue the House of Lords also held that it was possible to deport where there was a real risk that the person involved might be tried and convicted on the basis of evidence obtained, from others, by torture. As shown in *Ullah* (see 16.24, page 336) the Convention bars deportations where there is a real risk of death or torture (violating articles 2 and 3) but in respect a real risk of that other rights might be violated, the risk had to be of a “flagrant” violation. The risk of a trial that might use torture evidence was, when measured in the context of the Jordanian legal system, not a risk of a flagrant breach of article 6.

Cross reference: for deportation and the Convention see Chapter 16C, 16.21-16.26.