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Lord Maginnis of Drumglass
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23rd March 2013

Dear Ken,

Asil Nadir – Written Parliamentary Answer

I understand that you have raised with Baroness Stowell of Beeston concerns about the information I provided in the Written Parliamentary Answer on 15th March 2013, in relation to the Asil Nadir case and public interest immunity certificates.

The reason I could not address your question directly is that it is not appropriate to comment on the details of any case, in relation to matters of the kind you raised with me.

That said, it may be helpful if I set out for you the way in which the courts approach questions of public interest immunity. The doctrine as applied in the criminal courts, concerns the circumstances in which material held by the prosecution cannot be disclosed, fully or even at all, without the risk of serious prejudice to an important public interest. Where the prosecution have material to which they believe PII applies, they may ask the judge for an order confirming that they need not disclose it. The judge, in turn, must examine the material concerned and ask himself a number a questions:

- i) Is the material such as may weaken the prosecution case or strengthen that of the defence? If Yes, full disclosure should (subject to the answers to the other questions) be ordered.
- ii) Is there a real risk of serious prejudice to an important public interest if full disclosure of the material is ordered? If No, full disclosure should be ordered.
- iii) If the answer to i) and ii) is Yes, can the defendant's interest be protected without disclosure or disclosure be ordered to an extent or in a way that will give adequate protection to the public interest in question and also afford adequate protection to the interests of the defence?
- iv) Do the measures proposed in iii) represent the minimum derogation from the golden rule of full disclosure necessary to protect the public interest in question? If No, the court should order such greater disclosure as will represent the minimum derogation from full disclosure.

v) If limited disclosure is ordered pursuant to iii) and iv), may the effect be to render the trial process, viewed as a whole, unfair to the defendant? If Yes, then fuller disclosure should be ordered even if this leads or may lead the prosecution to discontinue the proceedings so as to avoid having to make disclosure.

Any order to withhold disclosure should be kept under constant review.

Commensurate with the nature of the public interests sought to be protected, the rules of court impose very strict obligations of confidence on the parties dealing with a case in which PII issues arise.

I hope that you find this information helpful in explaining why the specific answer was given.

*Yours sincerely,
Jim Wallace*

RT HON LORD WALLACE OF TANKERNESS, QC