



THE FACTS

SHEIKH RAED SALAH A SUMMARY OF THE TRIBUNAL HEARINGS



APRIL 2012

Sheikh Raed Salah

A summary of the tribunal hearings

Sheikh Raed Salah came to Britain at the invitation of the Middle East Monitor (MEMO) last June for a 10 day speaking tour. He was invited to address parliamentarians, journalists and the public to talk about Jerusalem, the Arab Spring, Palestine and Palestinian citizens of Israel. Three days into his visit he was arrested by officials from the UK Border Agency.

The UKBA claimed that Sheikh Raed had entered the UK despite a banning order issued by Home Secretary Theresa May. Such an order had not been issued to Sheikh Raed; neither the Sheikh, nor his hosts nor representatives were made aware of it. In response Sheikh Raed began legal proceedings to clear his name.

On 5th April 2012, Mr Justice Ockelton delivered his decision on Sheikh Raed Salah's appeal against the deportation order and ruled that it succeeded on all grounds. Mr Ockelton went further and said that the "Secretary of State acted under a misapprehension as to the facts [of the case]". Having won his legal battle Sheikh Raed returned to Israel on 16th April 2012; at no point did he want to stay in Britain.

The Case

- Immediately after Sheikh Raed's arrest he was held in custody; his legal team made an application for bail. The first bail hearing was heard at the lower tribunal and though the judge admitted that the Home Office legal representatives had not provided enough detailed information he would give the Home Secretary the "benefit of the doubt". The judge admitted that this "sounded lame".
- Sheikh Raed appealed against the refusal of bail and the appeal was heard at the High Court. The allegations put forward by the Home Office were heard in detail, as were the responses provided by Sheikh Raed Salah. The judge allowed the appeal and bail was granted, but with severe conditions, including a curfew, daily reporting to a local police station, an electronic tag and a prohibition on public speaking.
- In September 2011, after being in the UK for 3 months, the case challenging Sheikh Raed's period in custody was heard. He was awarded compensation for the time spent behind bars.
- After an initial hearing at the First Tier Immigration Tribunal, where the judge did not find in favour of Sheikh Raed, the legal team appealed and the case went to the Upper Immigration Tribunal, to be heard by Mr Justice Ockelton.
- Sheikh Raed's case was heard on February 6th and 8th, 2012 but the decision was not delivered until 2 months later on 5th April.



- Following his legal success, it looked like Sheikh Raed Salah had been the victim of a political decision based on biased evidence presented to the Home Secretary. Nevertheless, he had tried and tested the British legal system and was granted justice.

The Exclusion Order: how and why?

- Despite the fact that Sheikh Raed Salah's visit to the UK was publicised widely well before he arrived in London, Home Secretary Theresa May only revealed the existence of an exclusion order two days after his arrival and after his speaking tour had started. By this time Sheikh Raed had already addressed a closed roundtable discussion in the House of Lords, a public lecture in Central London and a public gathering in Leicester.
- Following a series of emails between the Community Security Trust (CST) and the Home Office, which were seen by Sheikh Raed's legal team, it appears that the Secretary of State took only 17 minutes to issue the exclusion order against the Sheikh. This decision was taken more or less solely on the basis of a report prepared by the CST.
- A Freedom of Information Act request revealed that the CST, an organisation established to tackle anti-Semitism in the UK, provided information to the Home Office on the politics of Hamas and the workings of an orthodox Jewish group, Neturei Karta.
- At the UIT hearing, Mr Justice Ockelton noted that the CST had been the only source of information used by the Home Office and questioned the HO legal representative (Mr Sheldon) about who else had been consulted. Sheldon confirmed that no other organisations had been approached, specifically no Arab nor Muslim organisations, for their views.
- Shortly after the exclusion order and Sheikh Raed Salah's initial arrest, Theresa May appeared before the Home Affairs Select Committee. She was unable to confirm when she had actually signed the exclusion order and despite a request by the Committee for that information, at a subsequent appearance four months later the Home Secretary had still not provided the details. In the end, the Committee sourced it from court records.
- The Home Office put forward 5 main allegations against Sheikh Raed in support of its belief that his presence in the UK was "not conducive to the public good". The judge's comments on each are given below:



1. The poem which, it was alleged, “proved” Sheikh Raed’s “anti-Semitism”.

1.1 “The respondent now accepts that the poem did not refer to ‘You Jews’... Even a cursory reading of the poem, however, shows that the ‘oppressors’ referred to by the appellant include Pharaoh, infamous for oppressing the Jews. The CST concedes... that the poem also refers to the Arab tribes of ‘Aad and Thamud who were destroyed in an earthquake as punishment for their behaviour. There are therefore examples of ‘oppressors’ in the poem who were clearly not Jewish or associated at all with the modern state of Israel. The comments of the CST... suggest that the appellant should be challenged to state who else he could mean but Jews. It is obvious to us that by oppressors he meant oppressors in general including but not limited to the State of Israel, indicated by the references to the oppressors who ‘corrupted our land’ and ‘bombed the mosques’. In our judgement the poem cannot be read as addressed to Jews.”

1.2 “Mr Sheldon submitted that the manner in which the poem was later reported, albeit inaccurately, was ‘plainly relevant to any assessment of its impact’. That may be so; but in deciding whether the way in which the poem was reported is relevant to a decision to deport the appellant we have to consider where the responsibility lies... There is no reason to suppose that the appellant is remotely responsible for the travesty of the poem upon which the Secretary of State relied.”

1.3 “She [the Home Secretary] must have been provided with a version from elsewhere but we do not know where... The position is that the poem as written by the appellant does not come within the Unacceptable Behaviours Policy and cannot contribute to an argument that the public good requires the deportation of the appellant.”

2. The “blood libel”

2.1 “Given the lack of accuracy in the basic text of the poem that had originally been relied on, we clearly need to look exactly at what the appellant said... It was immediately clear that this version did not contain any reference to ‘Jewish holy bread’ as had been suggested in paragraph 39 of the statement of the respondent’s witness, Mr Rosenorn-Lanng. This incorrect attribution to the appellant of the statement referring to Jews again appears to have been published in an Israeli newspaper, on this occasion, Ha’aretz...”

2.2 ‘We agree with Professor Pappé that the purport of the sermon as a whole was against the actions of the state of Israel towards the al-Aqsa mosque and that the focus was not on the blood libel. We have taken into account that the same sermon contained more moderate language and concepts and positive references to Jewish prophets and synagogues... We accept that this sermon was given on a somewhat turbulent day when the appellant had been refused permission to pray at one of the holy sites of his religion, one that he genuinely fears is under threat from the Israeli authorities.’

2.3 “There is no reliable evidence of the appellant using words carrying a reference to the blood libel save in the single passage in a sermon delivered five years ago. Similarly, the reliable evidence relating to calls to martyrdom is confined to the same occasion. The absence of other evidence is striking, for at least two reasons. The appellant is a prominent public figure and a prolific speaker.”



2.4 Sheikh Raed maintains that “he was aware that the blood libel is a fabrication used to persecute Jews; he has never invoked it and would not do so. He was using “holy bread” as a metaphor for those who had exploited religion as a cover for oppression and crime.” Sheikh Raed Salah has used this as his defence throughout and maintains his position that he is an anti-racist campaigner opposed to all forms of racism, including anti-Semitism and Islamophobia .

3. Destruction of the al-Aqsa Mosque and martyrdom

3.1 “The main theme of the sermon was the perceived threat to the site of the al-Aqsa mosque from the Israeli authorities. The respondent does not dispute that there are legitimate concerns amongst some sections of the community in Israel and, indeed, the international community concerning excavations underneath the site of al-Aqsa...”

3.2 “We agree with Professor Pappé that these statements were made about the Israeli state and not Jews and that the references to blood at this point of the sermon, as elsewhere, were to that of Palestinians killed or injured rather than a threat to the safety of Israeli citizens.”

3.3 The Home Office referred to a speech made on 16 February 2007. Sheikh Raed Salah, in his evidence, said he has never invoked the blood libel. According to Justice Ockleton’s ruling, “Professor Ilan Pappé, in his evidence, said that the speech was at times incoherent and emotive, but that in his view the speech did not include the blood libel; it was not anti-Jewish but directed to the violation of Muslim rights in Jerusalem, by anybody”.

3.4 “No context for the words quoted (in the speeches referring to martyrdom) was offered to us; and without that it is in our judgment impossible to say that they imported a call to retribution, violent protest, or active seeking of martyrdom.”

4. Current legal challenges against Sheikh Raed Salah

4.1 The Jerusalem Magistrates Court announced that it had issued two indictments against Sheikh Raed Salah on 23 June 2011 (the same day as Teresa May said that she signed the exclusion order, and over four years since the sermon, which the charges both relate to, of 16 February 2007).

4.2 “The allegations have not been tested in court. If there were good reason to suppose that the Israeli authorities were seriously concerned about the appellant’s words in 2007 that might well be a matter for the Secretary of State to take into account, even if the charges had not been proved... There had been a lapse of many years since the alleged incident and no subsequent incident of a similar nature is specified.”



5. Sheikh Raed Salah was “convicted of providing funding for an unlawful organisation”

- 5.1 The First Tier Tribunal pointed out that “The military wing of Hamas is a proscribed organisation in the UK under the provisions of the Terrorism Act 2000. It is the Respondent’s case that the Appellant is closely linked to this organisation as established by a prosecution of the Appellant in which it was alleged that the Appellant used charitable organisations as a front to provide Hamas with large sums of money. After a lengthy trial, the Appellant pleaded guilty to an amended indictment as part of a plea bargain as a consequence of which he was sentenced to six and a half years’ imprisonment of which only three and a half years was to be served. Eventually the Appellant served something less than that term.”
- 5.2 “What the Appellant says about this is that it was a political prosecution and he denies any links with Hamas. His only activity was to provide funds for genuinely charitable and humanitarian purposes. There is a statement from the Appellant’s Israeli advocate, Hassan Tabajah stating that the plea bargain was made on the basis that it was accepted that the Appellant did not intend to harm the security of the State of Israel, and that the appellant entered into the bargain in order to avoid a biased and harsh ruling.”

The Ruling

- Mr Justice Ockelton ruled that Theresa May had been “misled” by the evidence that had been provided to her. Despite the high level of attention that Sheikh Raed Salah’s case attracted, at no point did she consult with Muslim or Arab organisations.
- Justice Ockelton went on to note: “The essence of the decision under appeal, once the facts are properly analysed is that because of a few sentences in the sermon in February 2007, which nobody seems to have regarded as harmful at the time, the appellant is to be prevented from being in the United Kingdom or saying anything here (save by telecommunication), for an indefinite period of time. By the time that we come to look at the evidence the position is that his presence here [Sheikh Raed had by then been in the UK for 8 months] and what he has said here have caused no difficulty of any sort.”
- Most importantly, Mr Justice Ockelton referred not only to the deportation order, but also the earlier exclusion order and said that there was “no lawful basis for the Secretary of State to implement the exclusion order that was based on exactly the same material”.
- Finally, the judge commented that, “In these circumstances we think it can fairly be said that the evidence before us is not a sample, or ‘the tip of the iceberg’: it is simply all the evidence that there is.”



The impact of the Case

- Immediately after his arrest international support for Sheikh Raed poured in and concerns were expressed across the international community. Messages of support were sent inter alia by the Arab League, the Organisation for Islamic Cooperation, the Archbishop of Sebastia from the Orthodox Patriarchate of Jerusalem, and Nabil Sha'ath, the ex-Foreign Minister of the Palestinian Authority. Concerns included that the Home Secretary's actions could harm Britain's relationships with those working towards a solution of the Palestine-Israel conflict.
- Mr Justice Ockelton's ruling made clear that the Home Secretary should never have issued the exclusion order, without which the deportation order would not have existed. Yet it was the political manoeuvrings of one organisation which does not distinguish between legitimate criticism of the state of Israel and genuine anti-Semitism that persuaded a political decision to be taken against a prominent Palestinian political figure. This prompted Sha'ath to comment, "We will regard this issue as a political matter and not a legal matter."

