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Case No: QB-2020-004137

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/02/2023

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

MR VAKHTANG KULUMBEGOV Claimant

- and –

THE HOME OFFICE Defendant

- -
- -

The Claimant in person
Mr Colin Thomann (instructed by the Government Legal Department) for **the Defendant**

Hearing dates: 25th-26th January 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Mrs Justice Collins Rice :

Introduction and background

1. Mr Vakhtang Kulumbegov is a citizen of the Russian Federation. He was born in the USSR. He is ethnically Ossetian. He told me something of the troubled political history of the area he grew up in. He has few ties there now. He left in his teens to go to university in Moscow in 2000, and worked at the same time in a bank there. In October 2005, he was taken on in Moscow by a firm called Temenos.

2. Temenos is a company, headquartered in Geneva, Switzerland, with worldwide operations. It specialises in providing software to the global banking and financial services sector, and does so on a project basis. Temenos posted Mr Kulumbegov first to Kazakhstan in March 2006, and then to Ukraine in December 2008. He told me this was not necessarily what he wanted, but he took the long view. He was committed to developing career skills and expertise in the sector, and meant to work hard, gain valuable experience, and improve his languages. It worked out well for him. In 2020, Temenos confirmed his dream posting: to London, as a Senior Business Consultant.

3. Mr Kulumbegov told me the UK had long been his goal; he had hoped to settle here. He was granted entry clearance as a skilled migrant worker sponsored by Temenos under the points-based immigration system (specifically, the Tier 2: (Intra-Company Transfer) Rules) on 25th May 2010, having arrived a few months earlier on a visitor's visa. He brought his wife and their young child with him. Two more children were born here. His working life prospered. But his family life did not work out.

4. A domestic incident occurred on 25th October 2015. Mr Kulumbegov has his own account of what happened. But he was convicted in the Magistrates' Court on 15th June 2016 of assaulting his wife by beating, causing her minor injuries. He was ordered to undertake 150 hours' unpaid work, and pay compensation and costs, and a restraining order was imposed. On appeal to the Crown Court, his conviction was upheld, but his sentence reduced to 100 hours. He reported all this to the Home Office. He separated from his wife, and told me he took a thoughtful decision also to cease contact with his children.

5. His leave to remain under Tier 2 (ICT) as a sponsored worker had been extended, in July 2015, to June 2018. But when Mr Kulumbegov applied to the Home Office in June 2018 for a further extension, he was refused on the ground of his conviction. He brought judicial review proceedings to prove this decision was unlawful, and that is not now disputed. But in the meantime, in December 2018, he had been made subject to immigration bail, with a condition that he could not work, and he lost his job with Temenos.

6. He brings this claim under the Human Rights Act 1998 seeking compensation from the Home Office. He has at all times, and in relation to all the litigation referred to in this judgment, acted as a litigant in person.

The decisions complained of

7. The Home Office's refusal letter of 19th November 2018 said this:

> You have applied for leave to remain in the United Kingdom as Tier 2 (Intra-Company Transfer: Long Term) but the Secretary of State is satisfied it would be undesirable to permit you to remain in the United Kingdom in the light of your conduct.
>
> The Home Office has reviewed the facts known about your case and it has been concluded that, following your conviction for Battery on 15th June 2016, your removal on the grounds of your conduct would be conducive to the public good.
>
> This type of offence is an important consideration, together with the need to protect the public from serious crime and its effects.
>
> In light of this the Secretary of State has deemed that refusal is appropriate under paragraph 322(5) and is not prepared to exercise discretion in your favour.
>
> Therefore you do not satisfy the requirements of the Immigration Rules for this category and it has been decided to refuse your application for Leave to Remain as a Tier 2 (Intra-Company Transfer: Long Term) under paragraph 332(5) of the Immigration Rules.

8. Mr Kulumbegov asked for an internal Home Office administrative review. The decision was upheld on 20th December 2018. So he issued judicial review proceedings the following March. The case came before Pepperall J, sitting as an Upper Tribunal Judge, and he gave judgment on 28th November 2019. The Home Office had already conceded *the decision letter does not, contrary to Home Office guidance, evidence proper consideration of five important factors, namely the type of offence, the length of the sentence, the judge's sentencing remarks, the immigration history, and any pattern of offending*.

9. Pepperall J addressed himself to paragraph 322(5) of the Immigration Rules, the purported basis of the decision. This deals with, among other things, conviction cases where there has been no sentence of imprisonment, and no community order within the previous two years. And he looked carefully at the published Home Office guidance on how it should be applied. He observed as follows:

> This case concerns a single conviction for a summary-only offence where the court, both at first instance and on appeal, did not consider it necessary to impose a custodial sentence. There was no pattern of offending and Mr Kulumbegov was otherwise a hard-working professional man. There is accordingly a proper basis for arguing that the decision in this case was irrational and that the Secretary of State failed to follow his own guidance. Further, as conceded, the decision does not properly evidence the consideration of all relevant factors as required by the guidance.

10. Pepperall J, however, also noted that the Secretary of State had acknowledged as early as 19th July 2019 that the decision could not stand, and had offered to reconsider her predecessor's decision. Mr Kulumbegov had refused the proposed offer because he considered its terms defective or ineffective to settle the JR. The Secretary of State then made an improved offer, on 8th November 2019, on the basis that the decision would be withdrawn, Mr Kulumbegov could obtain a new certificate of sponsorship and have his Tier 2 application reconsidered, or, if he could not obtain a new certificate, she would consider his application for leave outside the Immigration Rules. The new decision would not be refused on the ground that he had been an overstayer since 20th December 2018 (and Home Office evidence at trial confirmed, as might be expected, that the new decision was to be made without reference to his conviction). But Mr Kulumbegov did not consider this satisfactory either, in particular because it left at large what type (period) of leave was potentially in contemplation.

11. Pepperall J addressed himself to the relief Mr Kulumbegov was seeking in the judicial review proceedings, beyond the quashing of the original decision. He noted he was asking for:

> a mandatory order compelling the Home Secretary to grant Indefinite Leave to Remain outside of the Immigration Rules, an order that the Respondent should consider his case on a priority basis and damages for loss of employment, humiliation, loss of reputation, distress and obstructing and hindering the right to a fair trial. He also seeks further damages under EU law and the Human Rights Act 1988, together with exemplary damages and an order that the Respondent bears the responsibility for covering his loss of earnings until he finds a new job.

12. Pepperall J's conclusions were as follows:

> [19] I am satisfied that if Mr Kulumbegov succeeded on this claim, he would be entitled to an order quashing the decision of 19 November 2018. He would not, however, be entitled to a mandatory order requiring the Secretary of State to grant him Indefinite Leave to Remain. Equally, in my judgment, he would not be entitled to damages for any unlawful administrative actions of the Secretary of State – see *R (Quark Fishing Ltd v Secretary of State for Foreign and Commonwealth Affairs [2007] UKHL 57* at [96]. Damages are potentially recoverable for breaches of the Human Rights Act 1998 or under EU law. The basis for such claims has not, however, been established before me and – in any event – a damages claim would be better brought by a Part 7 claim in the High Court or County Court.
>
> [20] Accordingly, I am satisfied that while Mr Kulumbegov might well have a claim with merit, it is unnecessary for me formally to decide his claim. Mr Kulumbegov's claim is academic and he could not reasonably expect to gain any greater advantage from pressing the matter to a hearing. As Mr Staker [Counsel for the Secretary of State] put it, the Secretary of State will reconsider his case whatever order I make today.

> [21] I accept that this case is of great importance to Mr Kulumbegov. Further, I accept the disastrous personal consequences of the Secretary of State's decision in his case and his obvious anger at the way in which he has been treated. These are not, however, proper reasons for the Tribunal entertaining an academic claim that does not, in my judgment, have any greater ramification beyond its own facts.
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> …
>
> [24] There are no proper grounds in the present case for entertaining an academic challenge when Mr Kulumbegov has already been offered everything that he could realistically hope to achieve through these judicial review proceedings. Accordingly, I dismiss Mr Kulumbegov's claim. The recitals to my order will – as volunteered by Mr Staker – record the Secretary of State's concessions as to her intended approach to the reconsideration of Mr Kulumbegov's case. Further, I award Mr Kulumbegov his costs up until 8 November 2019.

Mr Kulumbegov's claim

13. Considerable further immigration history and litigation followed. For present purposes, it suffices to say the Home Office did not agree to regularise Mr Kulumbegov's position in the UK until 17th March 2021. He had by then been in the UK for more than 10 years, and that was the weightiest consideration the Home Office took into account in finally granting him indefinite leave to remain. It remains the unlawful decisions of November and December 2018 for which he seeks compensation in the present claim.

14. He told me he drew support from Pepperall J's words in doing so, and indeed he sets them out in his amended particulars of claim. Mr Kulumbegov had of course already signalled his intention to pursue Human Rights Act damages in the JR proceedings, but accepts he had not at that time *established a basis* for doing so. But he emphasises Pepperall J's words that *damages are potentially recoverable for breaches of the Human Rights Act 1988* and that *a damages claim would be better brought by a Part 7 claim*. (For the avoidance of any possible doubt, I should perhaps record that, while of course these comments of Pepperall J are part of the relevant narrative, more weight cannot be placed on them than they can properly bear. Pepperall J cannot be taken to have done more than set out the *general* position in these remarks. His observation that *the basis for such claims has not, however been established before me* meant he cannot properly be taken to have expressed any view about whether such a basis might or might not exist on the particular facts of this case – much less could he properly be taken to have positively encouraged Mr Kulumbegov to bring such a claim. I have no doubt the Judge did not intend to – and did not – do so. But I say this only by way of clarification. The basis for Mr Kulumbegov's Human Rights Act claim is the subject matter of *this* trial, not the hearing before Pepperall J, and of course now falls to be considered on its merits.) Pepperall J had also *accepted the disastrous personal consequences of the Secretary of State's decision* for Mr Kulumbegov.

15. Mr Kulumbegov issued the present claim on 25th November 2020. His original particulars of claim identified that he was relying on section 8 of the Human Rights Act 1998. That provides, as relevant, as follows:

> **8. Judicial remedies.**
>
> (1)In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
>
> (2)But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.
>
> (3)No award of damages is to be made unless, taking account of all the circumstances of the case, including—
>
> (a)any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
>
> (b)the consequences of any decision (of that or any other court) in respect of that act,
>
> the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
>
> (4)In determining—
>
> (a)whether to award damages, or
>
> (b)the amount of an award,
>
> the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.
>
> …
>
> (6)In this section—
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> …
>
> "unlawful" means unlawful under section 6(1).

16. That last interpretative provision is important. What section 6(1) says is that '*it is unlawful for a public authority to act in a way which is incompatible with a Convention right*'. That means that where the remedies provisions of section 8 of the Act refer to an act of a public authority which is 'unlawful', they are referring *only* to cases where the unlawfulness involves the breach of a claimant's rights under the European Convention on Human Rights. So in bringing a claim in reliance on section 8 of the Act, a claimant has to show how they say their ECHR rights have been breached.

17. Mr Kulumbegov's original particulars of claim did not do that. By an Order dated 12th November 2021 (sealed 23rd November), Deputy Master Toogood provided as follows:

> The Claimant is to file and serve revised Particulars of Claim including precise details of his claim for a breach of Convention rights in accordance with CPR Practice Direction 16.15 by setting out the details of the Convention rights he alleges have been breached, details of the alleged infringement and to specify the relief sought, by 4pm on 26th November 2021.

18. Amended Particulars of Claim followed. In these, Mr Kulumbegov alleged infringement of his rights under Article 8 ECHR, which provides as follows:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

19. In relation to the *facts* on which he relied to demonstrate a breach of Article 8, and losses flowing from it, the amended particulars included the following:

> [40] The occasion for the claim for damages arose from the consequences of the established flawed decisions and immigration bail for right to work after 20 December 2018. This irrational interference by the Home Secretary to my private life had resulted in 'disastrous personal consequences'. Particularly, loss of job, sponsor, right to work, income, well-being, dignity and professional development (consequence-based approach). Therefore, falls within the scope of my private life under Article 8 … and meets the threshold of interference with it.
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> …
>
> [61] Therefore, in 2016 when I properly reported my conviction to the Home Office and Temenos, this did not affect my employment in financial industry. After immigration bail of 20 December 2018 when I lost my job, sponsor and even now with Indefinite Leave to Remain it became a serious problem to go back on track and take a position in financial industry, mainly because of conviction. The Home Secretary is not responsible for my conviction. However, the consequences of violation of Article 8 have a direct impact to my personal life, career and income. …
>
> …

> [64] The principles applied by the Convention under Article 41 – Just satisfaction (pecuniary damage). Considering the principle with regard to pecuniary damage, since it became impossible to place me back in the position I would have been in had the 19 November 2018 decision not taken place, in other words, *restitutio in integrum*; as a result of the Home Secretary's irrational decisions of 19 November 2018 and immigration bail of 20 December 2018 – I lost my job, sponsor, right to work and income. The Home Secretary is fully responsible for this. …

20. In relation to the *law* on which he relied, the amended particulars cite some of the caselaw on the application of Article 8 in circumstances where the focus of a complaint relates to loss of employment. I turn to that caselaw next.

The caselaw on Article 8 and loss of employment

(a) The Strasbourg caselaw

21. Section 2 of the Human Rights Act 1998 directs a court determining a question arising in connection with a Convention right to take into account any relevant caselaw of the European Court of Human Rights. The leading Strasbourg case on the relationship between Art.8 and unlawful acts resulting in loss of employment is ***Denisov v Ukraine*** *(Application no. 76639/11, 25 September 2018).* The facts are not directly comparable – ***Denisov*** was a case involving wrongful dismissal by a public authority. But the judgment of the court is expressed in general terms, and reviews all the relevant jurisprudence.

22. The ECtHR set out a broad definition of 'private life' in Art.8:

> The concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development, the right to establish and develop relationships with other human beings and the outside world … ([95]).

23. Turning to the issue of *'private life' in employment-related scenarios*, the Court said this, at [100]:

> Whereas no general right to employment, … or a right to choose a particular profession, can be derived from Article 8, the notion of 'private life', as a broad term, does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world. … Professional life is therefore part of the zone of interaction between a person and others which, even in a

> public context, may, under certain circumstances, fall within the scope of 'private life'.
>
> …
>
> In cases falling into the above mentioned category [employment-related scenarios involving Article 8] the Court applies the concept of 'private life' on the basis of two different approaches: (a) identification of the 'private life' issue as the reason for the dispute (reasons-based approach) and (b) deriving the 'private life' issue from the consequences of the impugned measure (consequence-based approach).

24. The 'reasons-based' approach governs what might be called personal discrimination cases. There is no dispute that it is only the 'consequence-based' approach which is potentially relevant to Mr Kulumbegov's claim. About that, the ECtHR went on to explain at [107]-[108]:

> … an issue under Article 8 may still arise in so far as the impugned measure has or may have serious negative effects on the individual's private life. In this connection the Court has taken into account negative consequences as regards (i) impact on the individual's 'inner circle', in particular where there are serious material consequences, (ii) the individual's opportunities 'to establish and develop relationships with others' and (iii) the impact on the individual's reputation.
>
> …
>
> … an analysis of the effects of the impugned measure on the above-mentioned aspects of private life is necessary to conclude that the complaint falls within the scope of 'private life'.

25. It then went on to confirm the following principle, at [110]-[117]:

> In cases where the Court employs the consequence-based approach, the analysis of the seriousness of the impugned measure's effects occupies an important place. …
>
> The concept of threshold of severity has been specifically examined under Article 8. …
>
> …
>
> It is thus an intrinsic feature of the consequence-based approach within Article 8 that convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant. As the Grand Chamber has held, applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way.

> …
>
> … The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree.
>
> The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts. An applicant's suffering is to be assessed by comparing his or her life before and after the measure in question. The Court further considers that in determining the seriousness of the consequences in employment-related cases it is appropriate to assess the subjective perceptions claimed by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure. However, it remains for the applicant to define and substantiate the nature and extent of his or her measure.

(b) The domestic caselaw

26. I have noted that ***Denisov*** was recently considered, approved and applied by the Privy Council in ***Royal Cayman Islands Police Association v Commissioners of the Royal Cayman Islands Police Service*** *[2021] UKPC 21* at [66]-[73].

27. The Strasbourg and domestic caselaw on Article 8 and loss of employment had earlier been reviewed by the High Court in a case which pre-dated ***Denisov***, and which is referred to by Mr Kulumbegov in his amended particulars: ***R oao Atapattu v Secretary of State for the Home Department*** *[2011] EWHC 1388 (Admin)*. In that case, the claimant's Art.8 case was put in two ways: (a) the Home Secretary's wrongful failure to grant a (study) visa infringed his right to respect for his private life by interfering with his ability to enhance his career prospects (and in this way his personal development) and (b) the refusal of a visa and/or failure to return his passport deprived him of his ability to work in the merchant navy, and this was a distinct infringement of his right to a private life as a disproportionate interference with his right to work and/or his status.

28. Consistently with the Strasbourg caselaw, the Court confirmed that in order to establish an infringement of his rights under Article 8, the claimant had to show there has been a relevant interference with the exercise of his right to respect for his private life, and that that interference has had consequences of such gravity as potentially to engage the operation of Article 8. It reached the following conclusions:

> [149] Under the ECHR, there is no express right to work and there is no right to choose a particular profession (*Thlimmenos* cited at §46 and *Sidabras*). In my judgment, *Sidabras* was a case where, on the facts, the applicants were wholly or very substantially deprived of the ability to work altogether. Furthermore it involved other effects on private life, going well beyond the ability to pursue one's own chosen career including public embarrassment as being former KGB officers. (I note in

> passing that in *R (Countryside Alliance) v Attorney General [2008] 1 AC 719* Lord Bingham described *Sidabras* as a 'very extreme case on the facts' and that the applicants were 'effectively deprived of the ability to work altogether). The position in *Smirnova* was even more extreme. The effect of retention of the passport not only precluded all work, but affected almost every reach of daily life in Russia.
>
> [150] In the present case, while Mr Atapattu's ability to pursue his chosen occupation of merchant navy seaman was hampered, there is no evidence that, for the time in which he was deprived of his passport, he was *unable* to work at all. (The only relevant evidence being that contained in his letters of 5 May and 11 June, where he stated the bare fact that he was 'not doing a land job'). Nor is there any evidence that the withholding of his passport had any other particular effect on the ability of Mr Atapattu to enjoy his private life, on his relations with other human beings or on his personal development. Article 8 does not give a right to choose one's particular occupation or to pursue it once chosen. The retention of the passport did not interfere with Mr Atapattu's right to respect for his private life.
>
> …
>
> [158] 'Personal development' within the concept of private life in Article 8 does encompass elements relating to both private life and to work life: see *Niemietz*, cited in *Sidabras*. This is because both are relevant to developing relations with other human beings, which is the key element of private life which is in play here. However in my judgment, merely enhancing one's qualifications within a particular chosen career path does not necessarily have an impact upon a person's ability to develop relationships with other human beings. Being prevented from gaining further qualifications or even from obtaining a particular appointment within a career path neither substantially hinders a person's ability to find work generally nor, more significantly, necessarily to develop personal relationships within the work environment. As I have already observed, there is no right to work per se and no right to choose one's occupation.

29. More recently, in another case mentioned in Mr Kulumbegov's amended particulars, the Court of Appeal in *Husson v Secretary of State for the Home Department [2020] EWCA Civ 329* looked at a claim where the issue of a Mauritian national's biometric residence permit, proving his entitlement to work in the UK, was delayed by some two years. Permission for judicial review was refused, and the Court of Appeal overturned the refusal; so it is important to note the Court was not concerned with the full merits of the case, just whether it was arguable. In concluding it was, the Court confirmed ([35]-[41]):

> To establish a breach of his Article 8 rights, the appellant must establish an interference with the exercise of his right to respect

> for his private and family life that has had such serious consequences as to engage the operation of Article 8. …
>
> Although there is no direct authority which establishes that a right to work is of itself protected by Article 8, and Article 8 does not give a right to choose or pursue a particular occupation, the Strasbourg authorities referred to in ***Atapattu*** demonstrate that where an individual is wholly or substantially deprived of the ability to work altogether, Article 8(1) is at least arguably engaged. I accept that the threshold is high.
>
> …
>
> It is now conceded as a matter of fact, that without a BRP or a stamp in his passport evidencing the right to work, the appellant was unable to take up any lawful employment in the UK because he would not be able to satisfy a UK employer of his entitlement to work lawfully. In those circumstances, the only basis on which it is now argued that there was no total deprivation is by reference to the possibility of the appellant returning to Mauritius to work there.
>
> It seems to me that as a matter of real world practicality, the appellant was prevented altogether from securing employment during the period of delay. It is unrealistic to expect him to have returned to Mauritius in a period when he expected to receive a BRP at any moment, had the right to remain here by reason of his family life here, and had the right to work here. Moreover, leaving the UK would have involved leaving behind his British wife and child.

Consideration

(i) Mr Kulumbegov's Article 8 rights

(a) Preliminary

30. I have set out the caselaw at some length, because, as I explained to Mr Kulumbegov, the essence of my task is to apply the law, including the authorities by which I am bound, to the facts of his case as set out in the evidence before me. And that is the task to which I am now about to turn.

31. Before doing so, I make some preliminary observations. The first is this. Mr Kulumbegov is deeply affronted by the Home Office's unlawful decisions, and his sense of grievance is manifest and altogether understandable. The Home Office had told him – and his sponsoring employer – that he was no longer entitled to live or work in the UK on account of his conviction. It said his removal would be conducive to the public good, bearing in mind the need to protect the public from 'serious crime' and its effects. Although the point has never finally been determined by a court, Pepperall J confirmed that Mr Kulumbegov at the very least had a meritorious case for arguing that the Home Office had not even taken the trouble to apply its own guidance and consider

properly whether such a damning conclusion was properly justifiable; and also for arguing that in doing so it had acted outside the limits of what the law regards as reasonable. The Home Office has long accepted its decision could not lawfully stand. Its witnesses confirmed that to me directly at the trial. This claim proceeds on the undisputed basis the Home Office decisions were unlawful.

32. The second is this. There is no dispute that Temenos had no choice at the time but to terminate Mr Kulumbegov's employment in the UK because of the Home Office's decision that he was not allowed to work here. Mr Kulumbegov lost a highly prized posting, and his career plans were dealt a bitter blow. I have no doubt he experienced events at the time, and since, as an overwhelming and grossly unfair personal disaster (to borrow Pepperall J's expression), and one entirely of the Home Office's making. He angrily blames the Home Office for ruining his outlook.

33. And the third is this. Mr Kulumbegov has brought all the focused drive, industry, intelligence and passion that I imagine may have characterised his previous working life, to the pursuit of redress through litigation. He has done so as a litigant in person, as he explained to me, because he is unshakably convinced of the merits of his case, because he has strong views about justice (he calls it 'truth in action') and because he has wished to maintain absolute personal control over how his case is presented. It has been an enterprise involving a huge investment of time and effort (I was shown a version of his CV which now records his personal litigation activity as accounting for a substantial portion of his recent working life). The result has been impressive as to the breadth of his research activity, and the diligence with which he has mastered and marshalled the detail of his case.

34. Mr Kulumbegov is not a lawyer. His resolute control over the terms on which he wished to advance his case, his insistence that I limit my focus to those terms, and his confidence that I must agree with his case on those terms, have in some respects led him to take positions which a lawyer might have advised him were not in his best interests. I have sought in these circumstances to balance respect for his wishes and his entitlement to present his case exactly as he chooses, with giving him the fullest and fairest possible opportunity to enable me to consider his case at its highest. Where relevant in the ensuing analysis, I explain how I have done so.

(b) The scope of Mr Kulumbegov's submissions on Article 8 ECHR

35. The starting point is that Mr Kulumbegov's claim for financial redress is wholly based on Art.8. He asserts no freestanding right to damages for the unlawful administrative decisions and acts of the Home Office as a public authority, and no tortious basis for his claim. That is his considered decision and needs no further comment except perhaps to say that I agree with Pepperall J that on the face of it no other obvious possibility presented itself.

36. Next, Mr Kulumbegov is clear that he places no reliance on interference with his family life in bringing this claim. Mr Kulumbegov's family life, and his relationship with his children, had featured in some of his immigration and litigation history in the meantime. A First Tier Tribunal decision dated 28th January 2020 included findings that Mr Kulumbegov was estranged from his wife and had not demonstrated he had a 'general' or 'genuine and subsisting' parental relationship with his children or that he was taking, or intended to take, an active role in their upbringing. He had no contact with them.

The FTT judge concluded '*given the circumstances I do not find the children will notice whether he is in the UK or not*' and there was no basis in Art.8 for him to remain in the UK. So Mr Kulumbegov's decision to exclude his family circumstances as irrelevant to this claim is probably realistic.

37. Instead, the focus of his claim is exclusively on the 'private life' aspect of Art.8. His amended particulars of claim focus on allegations about the impact of the decisions on him personally and individually – the loss of his UK posting with Temenos, his inability to work in the UK for more than two years, his lack of access to income and benefits in the UK, harm to his career and professional development, and non-pecuniary harm to his personal dignity and wellbeing.

38. He sustained that focus in his reply to the Home Office's written defence, and in his skeleton argument and oral submissions in the trial before me. He said he wanted to keep his claim simple: he wanted compensation for the loss of his job and the interim loss of a working life in the UK. That was the 'disastrous personal consequence' of the Home Office decision, and the breach of Art.8, on which he relied.

(c) Mr Kulumbegov's evidence

39. Mr Kulumbegov filed a brief witness statement dated 29th September 2022. This sets out his background, and events leading up to the Home Office decisions complained of. It describes the judicial review proceedings and the procedural and litigation events which followed. Again, it states that, as a result of the Home Office's decisions, '*I lost my job, sponsor and income*. *Consequently, violation of Article 8 – private life*'. He states that before the Home Office decisions, he had been employed by Temenos in the knowledge of his conviction. He also explains his more recent struggles to obtain employment in the financial industry, after being granted ILR, which he attributes to his '*spent conviction*'.

40. Mr Kulumbegov gave oral evidence at the trial before me. Mr Thomann, Counsel for the Home Office, took him first through his background. Mr Kulumbegov confirmed that, while working for Temenos during his London posting, his normal working pattern revolved around the firm's project-based business model. He would travel to oversee the installation of Temenos's software in the offices of clients in the banking and financial services sector. Some of this was in the UK, and a substantial amount was in northern and western European countries. He described a regular pattern of 'Heathrow on Monday, back to Heathrow on Thursday or Friday'. That was amply borne out by the records of his flight itineraries. He worked to the relevant director of each project, who could be based anywhere in the world. He said he did not necessarily like this pattern, but it was required of him by Temenos.

41. The next topic Mr Thomann took him through was the Home Office decisions and their consequences for him. Mr Kulumbegov stressed again that he was not relying on the 'family life' aspect of Article 8, but exclusively on the 'private life' aspect. And he emphasised again that the focus of his claim was on the direct consequences to himself of the loss of his work in the UK for the period in question.

42. Mr Thomann asked him about any possible impact on his interactions with others, whether in the workplace or more widely. We looked at a brief but cordial email exchange of greetings between Mr Kulumbegov and Mr George Koukis, the founder of

Temenos, on new year's day 2015. We looked at a brief 'landlord reference' provided when Mr Kulumbegov was, in early 2019, moving out of the flat he had occupied in London for the previous seven and a half years; the landlord was *very sorry to be losing him*; he was *a very nice person and a great tenant to have*; he had kept the flat well and always paid his rent on time. And we looked at another reference around the same time, this time from a neighbour. The neighbour writes warmly of Mr Vakhtang and his family, and the respect in which they were held (rather puzzlingly, it also refers to Mr Vakhtang being *a great loss to an international company that was prepared to allow him to work from home so he could take full care and responsibility for his children*). When asked whether he was still in touch with this neighbour, he said they sometimes spoke on the phone.

43. Mr Kulumbegov said he had friends in London, neighbours and work colleagues. He did not contradict Mr Thomann when it was put to him that, outside work, his life in the UK had been largely focused on his family up until 2016. And he said he did not want to talk about his contacts, friendships and relationships. He was firm that his claim was not about contacts and relationships, it was about the loss of his job and the direct consequences of that for him as an individual.

44. At the end of his oral evidence, I asked Mr Kulumbegov whether there was anything more he wanted to say about the circumstances in which he lost his job and the impact of that. He maintained his focus on the loss of his job, and his inability to work in the UK before he obtained ILR.

(d) The approach I am required to take

45. This is the claim, and these are the facts, to which I am required to apply the law on violation of Art.8. I am required by the Human Rights Act to take into account the approach indicated in *Denisov*. I am required to have proper regard to the guidance of the domestic authorities.

46. I remind myself therefore that, as Mr Kulumbegov at one point acknowledged, the authorities, Strasbourg and domestic, are unanimous that there is no *general* right to employment, or right to choose or pursue a *particular* occupation, profession or career, which is protected by Art.8. The loss of a job, profession or career will not, without more, constitute a violation of Art.8.

47. But nor does the fact that the consequences of an unlawful act play out in an 'employment-related scenario' *exclude* the possibility of an Art.8 violation. Everything will depend on the facts of the case, and whether the necessary 'something more' is established. How that is done is in turn governed by law and 'private life' has a particular meaning in ECHR jurisprudence. The 'consequence-based' approach to these question will *require* me to test whether the Home Office decisions led not just to the loss of his job and his interim ability to work in the UK, but also to negative consequences or impact on (a) Mr Kulumbegov's 'inner circle', (b) his opportunities to establish and develop relationships with others and (c) his reputation. It then *requires* me to assess whether any of these consequences are sufficiently severe to amount to violation of his Art.8 fundamental right to respect for his personal life. I have to do so on the basis of the evidence Mr Kulumbegov has placed before me.

48. The Court of Appeal in ***Husson*** further directs me to the relevance of an explicitly high threshold of whether a claimant is *wholly or substantially deprived of the ability to work altogether*, and that test was also considered in ***Atapattu***. Mr Kulumbegov asks me to consider that test in his case.

(e) Application of the law to the facts

49. Mr Kulumbegov brings this claim to establish his human rights have been violated by unlawful decisions of the Home Office. He relies on Art.8, out of conviction that the personal affront and personal losses he has suffered – his 'disastrous personal consequences' – must be compensatable by this route, since no other is apparent, and a failure of compensation is a failure of justice. I listened carefully to what Mr Kulumbegov said during the trial about the relative importance to him of financial compensation and of the principle of vindication. Of course, Mr Kulumbegov has already been substantially vindicated in principle by the Home Office's acknowledgment of its fault and withdrawal of its decisions. The decisions it has subsequently taken about him have all stood as lawful so far. And he has now had granted what he had hoped for all along – indefinite leave to live and work in the UK. So what remains is the principle – and practicalities – of financial compensation for his losses.

50. Mr Kulumbegov was clear that the focus of his claim is for loss of employment and loss of employment opportunity in the UK in the period between the Home Office decisions and its grant of ILR. The Art.8 right to respect for private life is of course a *human* right, not a pure economic right. That is why the unlawful causation of loss of employment, employment choices or employment prospects will not, *in and of itself*, found a human rights claim for the pecuniary or economic consequences of those losses. The law which is binding on me is crystal clear about this, and I cannot approach Mr Kulumbegov's case on any other basis. I have to look for and find something more than the loss of his job, before it is open to me to find an Art.8 human rights violation.

51. Mr Kulumbegov's decisions about the scope of his claim, and about the evidence he put before me, create a conundrum for him, therefore. He has been clear, consistent and emphatic that he is asking the court to focus on the loss of his job, sponsor, right to work and professional development. But the caselaw is clear, consistent and emphatic that this will not *by itself* enable me to find in his favour on an Art.8 claim.

52. The caselaw instead signposts two possible routes in a case like this capable of leading from loss of work to a sound Art.8 case. The first, and the one particularly emphasised by the ECtHR itself, requires the detailed exposition, and evidencing, of the impact on an individual's interpersonal and social life built up in and through the workplace and community in which they lead their life. The Court in ***Denisov*** acknowledges the extent to which working life provides opportunities to develop human relationships, and notes that this is the key point of intersection with the ECHR: Art.8 engages with and protects those opportunities for human flourishing and friendships in workplace communities, as part of its concern with human flourishing in home and local communities more generally. Art.8 is also, of course, concerned with privacy in its narrower or more exclusive sense – with individuals' entitlement to a measure of autonomous control over their personal information, identity and intimate lives. But ***Denisov*** is clear that 'private life in employment-related scenarios' is not essentially concerned with privacy but with interpersonal human flourishing in and through the workplace as an aspect of

community life. That is an intrinsic human good, something more than the economic opportunities of salary and career or what they can confer or buy in and of themselves, and Art.8 protects it.

53. Mr Kulumbegov's claim is not obviously privacy-based. But his pleadings and evidence do not engage with issues such as impact on his 'inner circle' and opportunities to establish and develop relationships with others, which ***Denisov*** says it is *necessary* to establish before a court can conclude an employment claim falls within the scope of Art.8 protected 'private life'. Mr Kulumbegov's pleadings do make reference to his well-being and dignity, and to his reputation. From the little that is said about them, these seem to be principally concerned with the economic and subjective impact on himself as an individual, rather than on his relationships with other people. The evidence he has provided about the impact of the Home Office decision on either his workplace relationships or his wider community life is scant indeed.

54. As to the former, apart from the brief new year greeting with a colleague, I have no evidence from Mr Kulumbegov about what the loss of his work colleagues might have meant to him on a personal or human level. As described in his oral evidence, in his working life he was not on a day to day basis part of any stable team of colleagues. He was sent on client-focused projects from week to week and usually abroad. His working relationships seemed to be serial and transitory; I did not hear anything in his evidence or submissions that made me understand the impact on him of loss of colleagues, rather than loss of job, with particular reference to his life in the UK. He certainly did not encourage me to focus on this.

55. And as to his wider community life in the UK, Mr Kulumbegov was positively unwilling to have me consider this. Aside from the couple of reference letters we looked at under cross-examination, which are obviously not capable of bearing real weight, Mr Kulumbegov gave me nothing to work with here.

56. I note in passing that he appears to have taken the same position before the FTT in early 2020, the last time the substance of Mr Kulumbegov's Art.8 human rights was considered in court. Mr Kulumbegov impresses on me that he had only ever brought that appeal, and made the underlying application, for what might be called protective reasons while he pursued other litigation, and fully expected not to succeed. I make no comment about that. But the FTT decision that he had no 'private life' in the UK protected by Art.8 was inevitable in the result. If Mr Kulumbegov did not consider it worth his while to address the foundations of his interactive and social life in the UK beyond his immediate family in that context, then his decision not to do so in the present context cannot be expected to be without consequence for his Art.8 claim now.

57. Mr Kulumbegov told me something of how he felt about spending two years as an overstayer in the UK, without the right to work and without access to benefits even though he had paid tax and NI, while he litigated to try to establish that right to work. I can extrapolate in Mr Kulumbegov's favour that the financial pressures and perhaps financial embarrassments he experienced may well have impacted his flourishing among his acquaintance. The nature and extent – the *seriousness* – of that, I can only guess at. I can extrapolate, but I cannot in fairness speculate. ***Denisov*** says an assessment of seriousness is necessary, and '*applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way*'. It is referring

there to its consequence-based approach to looking for more than pure economic impact, and it requires the repercussions to be of a demonstrated and evidenced degree of seriousness. Mr Kulumbegov has not sought to, and has not, provided evidence of the impact of the Home Office decisions on his inner circle, his opportunities to establish and develop relationships with others, or his interpersonal and social life in the workplace and the community – in the UK or indeed elsewhere – sufficient to enable me to recognise the necessary signifiers in *Denisov* of a violation of his Art.8 rights.

58. That takes me to the second of the two possible routes signposted in the caselaw as capable of leading in a case like this from unlawful loss of work to a sound Art.8 case. These are cases in which '*an individual is wholly or substantially deprived of the ability to work altogether*' (*Husson*) or '***unable** to work at all*' (*Atapattu*). The Court of Appeal called this a high threshold. It is indeed this route, rather than the interpersonal and social aspects and context of the loss of employment, Mr Kulumbegov asked me to focus on. I accordingly turn to consider its application to the facts of his case.

59. I have looked carefully at the detail of the cases themselves first. *Husson* was the case of the Mauritian national who was left waiting and waiting for his biometric residence permit. But he had first been granted 30 months' leave to remain on family life grounds. The delayed BRP was the *evidence* of that decision conferring the right to work that he needed to satisfy a UK employer of his entitlement to work lawfully. The Court of Appeal, considering the arguability of a human rights claim, accepted it could be said in the real world: first, no UK employer would employ him without the BRP; and second, the only alternative of expecting him to return to Mauritius was unrealistic. It was unrealistic because (a) he had originally been told to expect the BRP within 7-10 days, but even as days turned into weeks, months and years he was throughout entitled to expect the BRP to arrive at any moment; (b) he had a defined and established legal right to work in the UK, and was just waiting for the evidence to arrive; and (c) he had the right to remain here by reason of his family life here and leaving the UK would have involved leaving behind his British wife and child. Since no employer could have lawfully employed him in the UK, *and* it was unrealistic *for these reasons* to expect him to work in Mauritius, '*it is an inevitable inference that he was deprived of all employment opportunities that were available*'. There was also evidence of the '*arguably harsh impact this had on the appellant's ability to enjoy his private and family life given the debt into which he had fallen, with the inference that he was unable to support his wife and young child*'. There was evidence his accumulating debt was coupled with an inability to avoid county court judgments being entered against him.

60. The High Court in *Atapattu* however distinguished the claimant's circumstances from those of the 'extreme' predicament of claimants in the authorities reviewed who had been deprived of the ability to work altogether *and* had suffered acute consequences in their daily lives. Mr Atapattu's chosen occupation of merchant navy seaman had certainly been hampered, but there was no evidence he could not do other work (not requiring a passport), nor that the unlawful acts of the Home Office '*had any other particular effects on the ability of Mr Atapattu to enjoy his private life, on his relations with other human beings or on his personal development*'.

61. Both of these cases looked at the complete and cumulative effect of the unlawful acts in the context of such evidence as was available about impact on the whole of the individual's relevant private life. The Art.8 claim was rejected in *Atapattu* but considered arguable in *Husson*. Mr Kulumbegov says the facts of his case are closer to

the latter than the former. I can see that, like the claimant in *Husson*, no employer could lawfully have employed him in the UK in the relevant period. The question would then arise as to whether *as a matter of real world practicality* it was unrealistic to expect him to work anywhere else, so that this was effectively a case of 'total deprivation' – and, if it was, what the impact of that was on his 'private life' as protected by Art.8.

62. The facts of *Husson* are importantly different from the facts of the present case. The claimant in *Husson* had already established a distinct Art.8 basis for being in the UK, and for not being expected to leave it to find work – namely his family life here. He had an established right to work here on the basis of a current and valid decision in his favour. And he was in proper daily expectation of having that administratively confirmed. That is not Mr Kulumbegov's situation in any of these respects. But he says nevertheless that he was in effect 'totally deprived' – he *could* not work in the UK and *should* not have been expected to work anywhere else: no-one had a right to say he should do so. The way Mr Kulumbegov puts it is that he was all along *entitled* not to have the unlawful decisions made against him. He was *entitled* not to have to work anywhere else, or to have to think about doing so. He was *entitled* to pursue his litigation in the UK (and indeed in the process to continue building up the all-important continuity of residence that ultimately led the Home Office to grant him ILR).

63. When a claim is brought on the basis of a human rights violation, however, it is the impact of a decision that must be considered, and that includes, as in *Husson* and *Atapattu*, considering what *realistic* alternatives it left a claimant, however unattractive. Mr Kulumbegov had of course set his heart on UK-based employment; nothing else was nearly so attractive to him. But his Temenos career had required him to demonstrate in a sustained manner his competence in project-based work in overseas locations: he had amply demonstrated the transferrable professional skills, language facilities and personal resilience to be able to work successfully in many other countries. He had not demonstrated *other* interests protected by Art.8 (family or local ties) which made it 'unrealistic' for him to work outside the UK; indeed he spent most of his time doing so even while posted to London. Of course, that was not his Plan A, far from it. But neither is this obviously a case in which there was no realistic Plan B, one which would not itself violate his protected human rights. I say 'not obviously', because Mr Kulumbegov did not make an evidence-based case to me that he had *no realistic* prospect of obtaining or being able to work anywhere outside the UK. I have reflected on such materials as were before me nevertheless, in the interests of considering the most that might possibly be said in his favour on this issue. He was clear that he did not wish to work anywhere else. But he did not evidence that he *could* not, as a matter of impracticality.

64. Nor did Mr Kulumbegov put to me, as such, that his reduced financial position in the period in question was so acutely difficult as to amount itself to a violation of his human dignity, that is to say, that he was reduced to a position comparable to that of the claimant in *Husson*. He did not tell me he had financial dependants, or that he faced debt enforcement problems. He did say at one point that he had built up considerable borrowing overheads in the two year period. I noted also that the decision the Home Office ultimately took to grant him ILR on a discretionary basis had involved financial concessions. He was granted fee waiver, and exemption from the usual qualifying test, on grounds of impecuniosity. But I was not taken to any further detail of those grounds. Mr Kulumbegov did not put it to me in submissions or evidence that his financial

position had been so desperate as to impact on the sort of necessities of life that would be protected by Art.8 in their own right. That was not the case he asked me to consider.

(f) Conclusions

65. I have kept in mind the broad definition of 'private life' set out in the caselaw. I have followed such signposts as the authorities give to considering whether an unlawful act of a public authority in an 'employment related scenario' can amount to a violation of Mr Kulumbegov's human rights as protected by Article 8. I have applied the authorities I was shown to the evidence I was provided with. I have not considered myself unduly constrained by Kulumbegov's narrow submissions where I have seen an opportunity to take a wider perspective which might have assisted him. But I am entirely constrained by the facts and evidence he relies on. Beyond them I cannot fairly speculate.

66. As it is, and taking the authorities relied on at their most elastic, I cannot find a basis for stretching the caselaw on Art.8 violation so far as to fit the limited facts Mr Kulumbegov puts before me. I was shown no authority which comes close to identifying a human rights violation on properly comparable facts, and caselaw decisions do need to be read as a whole and understood in relation to the facts on which they turn.

67. I would add this, just by way of general context. As a matter of everyday experience, no-one could doubt that an individual's wellbeing – their sense of purpose, fulfilment or achievement, their pride and self-esteem, the development of their potential – may be intimately bound up with their working life, their job and their career. The loss of a valued job in *any* circumstances can hit all of those things hard. When it happens in circumstances of unlawfulness or unfairness, that can of course produce an entirely understandable subjective experience of insult added to injury. At the same time, many people do not have the good fortune of fulfilling work and career prospects. Many jobs may be considered in themselves corrosive of rather than conducive to individual wellbeing, beyond the pure economics. There is no Art.8 protected human right *as such* to a fulfilling job, a chosen job, or any specific job, to professional development or to career advancement. These are human *goods*, and their deprivation is a loss, but the addition of a causative unlawful act by a public body does not necessarily make them human *rights*, nor their deprivation a human rights violation. A Human Rights Act damages claim for lost work requires a claimant to establish not only causative unlawfulness but also a distinctive basis of rights violation deriving, in a case like this, from the impact of the loss on *protected* private life interests. It is for a claimant to demonstrate that impact, with relevant evidence and to an appropriate level of seriousness.

68. For the reasons I have given, I do not consider it to be properly open to me, on the law as it stands and on the evidence Mr Kulumbegov has put before me, to conclude that, as well as a victim of the Home Office's unlawful decision-making, he is also a victim of an Art.8 human rights violation. He has not discharged the burden the law places on him.

(ii) Other aspects of Mr Kulumbegov's claim

(a) Outstanding substantive issues

69. My conclusion that Mr Kulumbegov has not discharged his burden of showing me that his human rights have been violated is dispositive of his claim. That is the sole basis on which he brought it, and I am unable to uphold it on that basis.

70. There are a number of other aspects of his claim which, if he established that his human rights had, at least in principle, been violated, he would have needed to establish in addition.

71. These include issues of causation, mitigation of loss, and quantum of compensation. I mention a small number of matters in this connection by way of illustration of the further obstacles that Mr Kulumbegov might have faced in making good his claim.

72. First, there is an issue arising from the position of Temenos in the period after it terminated his UK-based employment in response to the Home Office's decisions. I was shown an email exchange dating from mid-November 2019, in which Mr Kulumbegov referred to a meeting with his former employer the preceding January at which it seems he had explained his plans for challenging the Home Office's decisions. He was now reporting on the process whereby the Home Office was proposing to settle the JR proceedings, including on the possible basis of Temenos being willing to resume (perhaps conditionally) its former sponsorship role. Mr Kulumbegov was asking for an indication of Temenos's position. Its HR manager replied that '*at this moment in time Temenos has a significantly reduced demand for recruitment and we are not in a position to be able to consider you for a Certificate of Sponsorship*'. There is at least a potential question here about the extent to which the Home Office, rather than other factors, is to be held responsible for this decision of Temenos.

73. The second relates to Mr Kulumbegov's conviction. He was of course right to say that the Home Office was not responsible for that. It appears that there may, however, be questions, including on his own account, around the extent to which the conviction, rather than the Home Office decision, may have been a causative factor in the narrative of Mr Kulumbegov's later difficulties in obtaining employment. This appears to be a particular issue in the UK financial services sector, where disclosure of 'spent' convictions may be a relevant requirement.

74. Third, Mr Kulumbegov might also have had to grapple with the fact that, after the Home Office had withdrawn its unlawful decisions, it made further decisions having the effect of denying him a legal entitlement to live and work in the UK, none of which, so far as I am aware, has yet been established to have been unlawful. The legal status and operative effect of these decisions, as well as the original unlawful decisions, might have had to be dealt with. The principal ground on which the Home Office eventually granted him ILR – 10 years' continuous residence – did not of course arise at any earlier point.

75. These, and other issues of substance, were in live contention between the parties. In the light of the conclusion I have reached on the application of Art.8, it is neither necessary nor proportionate for me to attempt to resolve them one way or the other. I mention them only by way of general context for the procedural issue to which I turn next.

(b) Limitation

75. Section7(5) of the Human Rights Act provides that a claim against a public authority for breach of human rights must be brought before the end of –

> (a)the period of one year beginning with the date on which the act complained of took place; or
>
> (b)such longer period as the court or tribunal considers equitable having regard to all the circumstances.

76. Parliament has accordingly determined a one-year primary limitation period for HRA damages claims to be brought as of right. There are reasons for that: general public policy reasons to do with the increasing obstacles the passage of time presents to holding a fair trial; and particular public policy reasons for limiting the exposure of public authorities to unpredictable and unmanageable demands on public resources, and encouraging the swift and efficient disposal of claims against them. That is the balance the Act has struck between the interests of the public and of individual claimants.

77. Parliament has also provided a broad discretion for a court to substitute a longer period where that is equitable, or fair to both sides, in all the circumstances. That will usually involve looking back at the history of the matter and the reasons for the delay. It will also involve making the best assessment of the merits of the claim as is reasonably possible in the inevitably limited circumstances of what are usually interlocutory applications.

78. The unlawful acts of the Home Office on which this claim relies are the refusal decision of 19th November 2018 and the administrative review decision of 20th December 2018 which upheld the refusal. Mr Kulumbegov's claim form initiating these proceedings is stamped for 25th November 2020. It appears he may have made some efforts not long before to file his claim, but these had been rejected as invalid.

79. On the face of it, therefore, Mr Kulumbegov's claim was brought nearly a year past the statutory primary limitation period – or in other words, he has taken twice as long to bring it as the Act allows for as of right. On the face of it also, therefore, he has no right to bring this claim, and must rely on the discretion of the Court further to s.7(5)(b) to do so.

80. Mr Kulumbegov's position on limitation was unexpected in these circumstances. He makes no request for the exercise of discretion under s.7(5)(b); indeed he positively asks that I do not consider the exercise of my discretion. Instead, Mr Kulumbegov asks me to confirm as a matter of law that he brings his claim, as of right, under s.7(5)(a).

81. He relies for this effect on the decision of the Supreme Court in *O'Connor v Bar Standards Board [2017] 1 WLR 4833*. According to the headnote, the Court in that case found that:

> for the purposes of section 7(5)(a) of the Human Rights Act 1998 the 'act' of which the claimant complained, namely the conduct of the Bar Standards Board in bringing and pursuing the disciplinary proceedings, was a single continuing act which continued until the Visitors allowed the claimant's appeal; that where there was a single continuing act of alleged

> incompatibility with the Convention, time ran under section 7(5)(a) from the date when the continuing act ceased rather than when it began; that, therefore, the claimant's claim had been commenced within a period of one year beginning with the date on which the act complained of took place, as required by section 7(5)(a); and that, accordingly, the claim was not statute-barred.

82. Mr Kulumbegov invites me to reach an equivalent conclusion in his case. He says I may or must regard the unlawful decisions of the Home Office, *together with the ensuing process during which he was engaged in challenging those decisions*, as 'a single continuing act of alleged incompatibility'. That 'single act' might be considered to have ended no earlier than the decision of Pepperall J dated 28th November 2019. Mr Kulumbegov says the issue must be regarded as *still open until the problem is solved*. So he says that by issuing a claim on 25th November 2020 his claim falls within the one-year period in s.7(5)(a).

83. I have read the judgment of the court in *O'Connor*. It was a case in which the claimant, a barrister, was alleging unlawful discrimination against her professional regulator (the Bar Standards Board) in bringing disciplinary proceedings which ended in her acquittal on an appeal to the Visitors of the Inns of Court (who used to exercise a visitorial jurisdiction over the relevant disciplinary tribunal). She alleged breach of Art.6 (the right to a fair trial) and Art.14 (discrimination on a protected ground). The Court held (at [29]) that

> …the alleged infringement of Convention rights in the present case arises from a single continuous course of conduct. Although disciplinary proceedings brought by the BSB necessarily involve a series of steps, the essence of the complaint made here is the initiation and pursuit of the proceedings to their conclusion, ie the entirety of the course of conduct as opposed to any component steps. … prosecution is a single process in which the prosecutor takes many steps. It cannot have been the intention of Parliament that each step should be an 'act' to which the one-year limitation period should apply. I also note in this regard that, were it otherwise, a prosecution which lasted longer than one year could not be relied on its entirety as a basis of complaint unless proceedings were commenced before the conclusion of the disciplinary proceedings or relief were granted under section 7(5)(b). A claimant would be placed in the difficult position of having to bring a human rights claim within one year of the commencement of what might be lengthy proceedings, without knowing the outcome which might be very material to the claim.

84. The Court noted that the 'act' complained of in this case was 'bringing and pursuing disciplinary proceedings'. The question it had to resolve was whether the BSB's actions in opposing the claimant's appeal to the Visitors was a part of what it had described throughout the proceedings as 'a prosecution'. In answering that question it was necessary to have regard to the regulatory scheme and the 'precise features' of the BSB's conduct. The Court identified eight distinctive features of the visitorial jurisdiction which, considered cumulatively, persuaded it that the BSB's part in the

proceedings before the tribunal *and* the Visitors were to be regarded as essentially one continuing act.

85. The claim in *O'Connor* was founded on Art.6 ECHR. That protects fundamental procedural entitlements in the *determination* of an individual's *civil rights and obligations or of any criminal charge against them*. It is an article which is all about procedure. Sometimes breaches of Art.6 are alleged to be constituted by a single incident or feature of a public authority's procedure. But *O'Connor* was also an Art.14 case. What was alleged was that the BSB's whole process of pursuing disciplinary charges was a breach of Art.6 because it was in all respects unlawfully discriminatory. The Court found, on the basis of the 'precise features' of the relationship between the tribunal proceedings and the visitorial jurisdiction, that the BSB act of conducting opposition to a formal appeal before the Visitors was an essential component of the whole impugned procedure.

86. The issue in *O'Connor* was the meaning of 'act' in s.7(5)(a). Where the act complained of under Art.6 is a procedure, then a definitional question arises about the precise contours of the procedure for which the public authority is to be held responsible. The court held, on a granular consideration of the visitorial jurisdiction, that the BSB's participation in the appeal was its 'act' and part of the whole formal procedure complained of.

87. Mr Kulumbegov's claim does not allege infringement of a procedural right. There is no ambiguity about the 'act' complained of. Mr Kulumbegov is entirely clear about that – he complains of the Home Office's two unlawful decisions at the end of 2018. Of course, he complains about the ongoing consequences of those acts. But his own pursuit of JR proceedings does not even arguably constitute an essential component of the 'act' of the Home Office of which he complains. (Nor did the Home Office actively resist the challenge to the lawfulness of its decision throughout in any event.)

88. The Supreme Court in *O'Connor* held that, as a matter of practicality, to take any other view than it did about the unity of the BSB's procedural 'act' would itself have hollowed out the substance of the complainant's protected procedural rights. Here, Mr Kulumbegov's complaint of an unlawful act was fully crystalised when the decisions were taken, taking 20th December 2018 as the date when the decision-making process was regarded by the Home Office as complete and final. Where Art.8 challenges are brought in conjunction with an allegation of unlawful decision-making, they are very often brought at the same time – that is, within the three-month long stop period for bringing JR proceedings. It may be that the elements of unlawfulness and of entitlement to damages are in the event considered sequentially, but that need not delay the *initiation* of a damages claim. Mr Kulumbegov acknowledged that he had an opportunity to bring a particularised human rights claim (necessarily based on an identifiable 'act' of the Home Office, already acknowledged to have been unsustainable in law) at least by the time his case was before Pepperall J, towards the end of the one-year period, but had not done so.

89. So there is no issue about the application of the one-year time limit to the date of the Home Office decisions as in practice hollowing out the substance of his claimed rights or making it impracticable to bring the challenge he wanted to. It is inconceivable that Parliament intended the pacing of a claimant's own management of his dispute with a public authority to stretch the definition of an 'act' in the way Mr Kulumbegov contends

for. It would entirely hollow out the limitation period, and undermine the careful balance that Parliament has struck in s.7(5)(a).

90. Mr Kulumbegov's reliance on *O'Connor* to assert an *entitlement* to bring this claim nearly a year too late is misconceived. He has no relevant explanation for the delay. His claim does not fall within s.7(5)(a). He does not wish me to consider my discretion under s.7(5)(b). It was of course open to me to consider the exercise of my discretion in any event, but in the absence of submissions and evidence relevant to it, there was insufficient material before me fairly to justify doing so on a balance of relevant considerations. I would say only this, in addition. The authorities on the exercise of the s.7(5)(b) discretion are clear that the merits of the underlying claim play an important part in the balance of the factors to be taken into account. I had the opportunity of being able to consider the full merits of the case Mr Kulumbegov put to me at trial, rather than (as is more usually the case) at an earlier interlocutory stage, and reached the conclusion on the merits that I did. And Mr Kulumbegov has had the opportunity of a full trial of the merits of his claim without having demonstrated the necessary statutory entitlement to that.

Decision

91. Mr Kulumbegov had the misfortune to have been subjected to decisions of the Home Office at the end of 2018 which were, and have since been acknowledged to be, unlawful. The immediate consequence of these decisions were the loss of his sponsored job and his right to work in the UK. He brought this claim for financial compensation in reliance on the Human Rights Act 1998. For the reasons given, he has not discharged his burden – and particularly not his evidential burden – of enabling me to find that the Home Office decisions, as well as being unlawful, also constituted a violation of his fundamental Art.8 human rights. His claim is in any event statute barred. On both grounds, his claim must be dismissed.