



Press Summary

18 December 2025

Secretary of State for the Home Department (Appellant) v Kolicaj (Respondent)

[2025] UKSC 49

On appeal from: [2025] EWCA Civ 10

Justices: Lord Reed (President), Lord Lloyd-Jones, Lord Briggs, Lord Sales and Lord Stephens

Background to the Appeal

Mr Kolicaj was born an Albanian national. He arrived in the UK in 2005 on a visa and was subsequently granted indefinite leave to remain on the basis of his marriage to a British citizen. In 2009, he became a naturalised British citizen. Following the breakdown of his marriage and divorce, in 2013 Mr Kolicaj married an Albanian national.

On 27 February 2018, having pleaded guilty, Mr Kolicaj was convicted of conspiracy to remove the proceeds of criminal conduct from England. The conspiracy involved Mr Kolicaj and his brother arranging to transport from the UK to Albania large quantities of cash, estimated at about £8 million, generated from criminal conduct of an undetermined nature. Mr Kolicaj was sentenced to six years' imprisonment.

In October 2020, the National Crime Agency (“**the NCA**”) recommended that the Secretary of State should consider using her power under section 40(2) of the British Nationality Act 1981 to deprive Mr Kolicaj of his British citizenship on the ground that it was conducive to the public good. A civil service submission to the Secretary of State in December 2020 invited her to consider using that power to do this (“**the December 2020 submission**”). The Secretary of State made a deprivation decision in line with the recommendation and this invitation.

On 22 January 2021, in accordance with the prescribed statutory procedure, the Secretary of State served a notice of intention to make a deprivation order (“**the Notice**”) on Mr Kolicaj in prison. About 30 minutes later, she served on him an order depriving him of his British citizenship (“**the Order**”). The Secretary of State deliberately served the Notice very shortly after the Order in order to ensure that Mr Kolicaj would not have an opportunity to renounce his Albanian citizenship before the Order was served on him. If he were to have done so, then according to the statutory regime the Secretary of State would not have been able to make an order depriving him of his British citizenship, because such an order would have rendered him stateless.

When the Secretary of State decided to deprive Mr Kolicaj of his British citizenship, the only relevant statement of policy regarding the use of the section 40(2) power which was available in the public domain was set out in Chapter 55 of the Home Office's Nationality Instructions. That policy stated that conduciveness to the public good "*means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours.*" However, on 13 May 2020, before the Secretary of State made her decision, another civil service submission had been made to the Secretary of State ("**the May 2020 submission**") recommending that she should use her power of deprivation under section 40(2) against people who were guilty of the most serious and high-profile cases of serious organised crime. The proposed approach in the May 2020 submission was agreed by the Secretary of State, but it was not in the public domain at the time of the Secretary of State's decision in January 2021 to deprive Mr Kolicaj of his citizenship.

Mr Kolicaj appealed to the First-tier Tribunal against the deprivation decision, exercising his right of appeal set out in section 40A of the British Nationality Act 1981. He contended that his offending was not sufficiently serious to warrant his being deprived of his citizenship and that his and his wife's and children's rights to respect for their private and family life had not been taken properly into account. The First-tier Tribunal dismissed the appeal.

Mr Kolicaj appealed to the Upper Tribunal. The Upper Tribunal allowed his appeal, on the ground that the Secretary of State had not distinctly considered, as she should have done, whether she should make use of her discretion under section 40(2) in Mr Kolicaj's case.

The Secretary of State appealed to the Court of Appeal. The Court of Appeal found for the Secretary of State on her ground of appeal, holding that the evidence showed that the Secretary of State had appreciated that she had a discretion as to whether to make the deprivation order, and had exercised that discretion. However, the Court of Appeal upheld the Upper Tribunal's decision on the different basis that the deprivation decision, the Notice and the Order were affected by procedural unfairness because Mr Kolicaj was not given an opportunity to make representations to the Secretary of State before she made her decision and issued the Notice and the Order, and the section 40A appeal did not satisfy the requirements of procedural fairness.

The First-tier Tribunal, the Upper Tribunal and the Court of Appeal all proceeded on the basis that Mr Kolicaj's appeal under section 40A was concerned only with the lawfulness of the Secretary of State's decision in the circumstances as they existed when that decision was made on 22 January 2021.

The Secretary of State appeals to the Supreme Court. Her appeal raises two issues: whether procedural fairness required the Secretary of State, when issuing the Notice and making the Order, to offer to review her decision by way of a reconsideration of the merits on the basis of representations made by Mr Kolicaj, as the Court of Appeal held she should have done (**Issue 1**); and whether the Court of Appeal erred in quashing the Order, when it had no power to do so (**Issue 2**).

Mr Kolicaj cross-appealed to contend that the decision of the Court of Appeal should be upheld for further, different reasons. His cross-appeal raises three further issues: whether the Secretary of State was under an obligation to investigate the extent of the risk that Mr Kolicaj might be able to renounce his Albanian citizenship before she took her decision (**Issue 3**); whether the Secretary of State applied an undisclosed policy to his case which rendered her decision unlawful (**Issue 4**); and whether the Secretary of State failed to exercise her discretion under section 40(2), as the Upper Tribunal had held (**Issue 5**).

Judgment

The Supreme Court unanimously allows the Secretary of State's appeal and dismisses Mr Kolicaj's cross-appeal. Lord Sales gives the judgment, with which all members of the Court agree.

Reasons for the Judgment

The Supreme Court begins by clarifying the nature of an appeal under section 40(A) (and, where appropriate, under section 2B of the Special Immigration Appeals Commission Act 1997). The appeal is an appeal on the merits of the case: *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2023] 2 WLR 386, at [38]-[40]. The jurisdiction of a court or tribunal dealing with an appeal under section 40A (or the Special Immigration Appeals Commission, "SIAC", dealing with an appeal under section 2B) is appellate rather than supervisory.

The legal principles which an appellate body applies are not determined by the characterisation of the jurisdiction as involving an appeal on the merits, but by the nature of the decision under appeal and the relevant statutory provisions. Different aspects of the same appeal can therefore result in the application of different principles: *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7; [2021] AC 765, at [68]-[71].

New evidence can be adduced on an appeal under section 40A or section 2B: *U3 v Secretary of State for the Home Department* [2025] UKSC 19; [2025] 2 WLR 1041 ("*U3*"), at [44]. The subject matter of such an appeal is the decision as maintained at the time of the appeal, in the light of any new evidence and new submissions which come to light in the course of the appeal process: *U3*, at [20], [46]-[47] [47]-[58].

Issue 1: Was the Secretary of State obliged to offer to review her decision by way of a reconsideration of the merits on the basis of representations made by Mr Kolicaj?

The procedure set out in sections 40 and 40A of the 1981 Act (and, where appropriate, under section 2B of the Special Immigration Appeals Commission Act 1997) is concerned with ensuring that an individual has a fair opportunity to challenge a deprivation decision made by the Secretary of State [59].

There is no fairness gap of the kind contemplated by the Court of Appeal. An individual affected by a deprivation decision has the right to challenge it by an appeal on the merits in which they can introduce evidence of their own and make any representations they wish. The decision which is the ultimate subject of consideration by the First-tier Tribunal (or SIAC, as the case may be) is the decision which the Secretary of State seeks to maintain and defend after taking account of any new evidence and any such representations. The First-tier Tribunal (or SIAC) is not limited to a review of the decision as originally made by the Secretary of State. Properly analysed, there is therefore no fairness gap which has to be filled by the courts devising an additional procedure; contrary to the judgment of the Court of Appeal, there is no justification for imposing an obligation on the Secretary of State to follow such a procedure [61].

Issue 2: Did the Court of Appeal err in quashing the Order?

The First-tier Tribunal and SIAC are given jurisdiction by section 40A and section 2B respectively to determine appeals under those provisions. In accordance with normal principles of statutory interpretation, they are clothed with all powers reasonably incidental to the exercise of that jurisdiction. If an appeal against a deprivation decision is allowed, the incidental powers of the First-tier Tribunal and SIAC include the power to make an order to set aside (rather than 'quash') the decision and to set aside the notice and order which flow from that decision [70]. The Court of Appeal has jurisdiction on an appeal to it to exercise all the powers which the

inferior court or tribunal has (section 15(3) Senior Courts Act 1981 and rule 52.20(1) of the Civil Procedure Rules). The Court of Appeal therefore had the power to set aside the Notice and Order [71].

Issue 3: Was the Secretary of State under an obligation to investigate the extent of the risk that Mr Kolicaj might be able to renounce his Albanian citizenship?

The scheme of sections 40 and 40A indicates that the Secretary of State was not under any obligation to investigate and to find that such a risk existed before she was entitled to omit to give Mr Kolicaj an opportunity to make representations about his case before she made a deprivation decision. In the deprivation regime, the requirement of fairness is satisfied by the right of appeal, so it does not support an opportunity to make representations before a deprivation decision is made [77]. The statutory procedure set out in sections 40 and 40A is designed to be capable of being operated without involving any risk of the Secretary of State being prevented from taking action in the public interest by way of deprivation of citizenship by the fact that the individual concerned, with notice that a deprivation decision might be made, had renounced their foreign citizenship. It would be contrary to the intention of Parliament, and would undermine the proper application of the regime, to say that the Secretary of State is required to make an evaluative assessment of foreign law in order to decide whether to invite the individual to make representations before taking her decision [78].

Issue 4: Did the Secretary of State apply an undisclosed policy?

Contrary to the submission of the Secretary of State, the May 2020 submission did set out a new policy: it was not merely a development of the existing policy set out in the Nationality Instructions [81].

The requirement to publish policies in relation to the exercise of discretionary powers stems from the principle of fairness (*R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12; [2012] 1 AC 245). If Mr Kolicaj had never learned of the criteria in fact being applied by the Secretary of State as set out in the May 2020 submission in deciding whether to make a deprivation decision in his case, and had for that reason been deprived of the opportunity to make representations why his case fell outside the policy as set out in that submission so that no deprivation decision should be made in relation to him, he would have a good argument that the decision made was unlawful [82]. However, by the time of Mr Kolicaj's appeal hearing in the First-tier Tribunal he did know about the policy statement in the May 2020 submission: he had, and took, the opportunity to make submissions about why his case fell outside the criteria in that policy statement. The principle of fairness did not require that he have the opportunity to make representations at the time of the original decision, since fairness is satisfied under the regime by the provision of a notice under section 40(5) giving reasons and a right of appeal under section 40A [83]. The issue on an appeal to the First-tier Tribunal is whether the challenge to the deprivation decision as maintained by the Secretary of State in the course of the appeal should be allowed. In relation to that issue, Mr Kolicaj had a full and fair opportunity to present his case regarding the application of the policy set out in the May 2020 submission, with the result that the deprivation decision could not be set aside on the ground of unfairness. There was no question of unfairness arising from the previous non-publication of that policy which could affect the challenge to the deprivation decision as it was maintained and was in issue on the appeal [83].

Issue 5: Did the Secretary of State fail to consider distinctly whether to exercise her discretion under section 40(2)?

It is clear from consideration of the December 2020 submission and from the terms of the Notice that the Secretary of State did in fact properly consider the exercise of her discretion arising under section 40(2) [87].

Mr Kolicaj's cross-appeal is dismissed. The Secretary of State's appeal is allowed.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)