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Country of Decision:

Slovakia

Country of Applicant:

China

Date of Decision:

16-10-2007

Citation:

1 S?a/9/2007

Court Name:

Supreme Court of the Slovak Republic

Keywords:

Credibility assessment

Membership of a particular social group

Relevant Legislative Provisions:

International Law

International Law > UN Convention against Torture

Headnote:

Within the meaning of Section 8 of the Asylum Act, a particular social group is a group of people who share a common characteristic which is objectively given or is perceived as such by society. The characteristic in question usually has an innate, unchangeable form or is otherwise fundamental to human identity, conscience or the exercise of the human rights of the persons affected.

It therefore usually comprises a group of people of similar social origin or status, social habits and customs, or of a similar sexual orientation, who are in a minority due to their otherness.

Facts:

In the contested decision, the Regional Court in Bratislava upheld the Respondent's Decision No: MU-9907/PO-?/2004 of 1.3.2005 not to grant asylum to the Appellant on the territory of the Slovak Republic under Section 13(3) of Act No. 480/2002 on asylum, and not to apply a prohibition on deportation or return to China under Section 47 of the Asylum Act to the Appellant.

The Regional Court concluded that the Respondent had conducted a sufficient finding of the facts in the contested decision and had drawn from them the correct legal conclusion. According to the Regional Court, the existence of fears as subjective feelings is not a sufficient ground for the recognition of asylum, as the fears must be well-founded, i.e. there must be circumstances which objectively give rise to a fear of persecution. The Regional Court pointed out that the Appellant, since her arrival, had made statements about her reasons for leaving China four times in total, and the reasons she stated were not plausible in view of the fact that, in the proceedings before the Court, she listed circumstances connected with her participation in the Falun Gong movement as the main reason. The Regional Court held that if the Appellant was an active member of the Falun Gong movement, and if the reason for her departure was a well-founded fear of persecution by the Chinese state authorities, she would always have stated these reasons unambiguously in all of their complexity and she would have had satisfactory knowledge of the Falun Gong movement.

With reference to the contradictions in the Appellant's statements during the asylum proceedings and during the proceedings before the Court, the Regional Court considered the Appellant to be unreliable, and confirmed that the Respondent's decision was lawful insofar as it had decided not to grant asylum to the Applicant and statements deciding not to apply the prohibition on deportation or return to China to the Applicant.

The Appellant lodged an appeal against the decision of the Regional Court within the time limit, in which she asserted that the court of first instance had arrived at an incorrect finding of the facts on the basis of the evidence taken and that the Court's decision was based on an incorrect legal assessment of the case. The Appellant asserted, against the grounds of the decision, that from the very beginning she had indicated that her reason for leaving China was membership of the Falun Gong.

She stated that she had left the country on the basis of a well-founded fear of persecution due to membership of the Falun Gong, a practice she had followed during her life in China. In 2004, the main trainer of the group in which she practiced was arrested. She found out about this from the husband and daughters of the trainer, and in view of the practices of the Chinese authorities who often use inhuman treatment during interrogations, she was advised to leave her country of origin, as she was also at risk of arrest.

She stated that, at the time of detention by the Foreigners' Police there were 43 Chinese immigrants present at the police station, and it was therefore impossible for each immigrant to have sufficient time and space to state their personal reasons for leaving China, and when notes were taken on the statements the reason 'securing better employment' was used as the reason for many of the applicants, and the Appellant expressed the belief that the police made a mistake in failing to record the real reason for her departure.

The Appellant stated that she had requested international protection after a long journey from China lasting several months, in a foreign state the territory of which she had never visited, not knowing the given culture, being traumatised and feeling fear and distrust of strangers, and she therefore considered it unreasonable of the Regional Court to expect her to explain the grounds for her application clearly and exactly.

The Appellant objected to the Regional Court's claim that she did not know enough about the

Falun Gong movement, stating that her knowledge did not contradict the information generally available about the movement. The fact that she described the Falun Gong symbol as a wheel resembling the sun, rather than a universe symbol, was not diametrically different from the truth, in her view. The main evidence for her being a member of the movement was her summons to the People's Court in Beijing (the Appellant filed a copy of this together with the appeal) in a criminal case of 'Demeaning of national symbols through misuse by a false religion'. The Appellant also submitted to the Court further evidence (copies of photographs) showing her Falun Gong exercises.

The Appellant finally challenged the decision in relation to the prohibition on deportation or return to China and in this context drew attention to a file containing many reports about the Falun Gong and the real threat of being deprived of liberty and even life in the event of return. In this context, she referred to Article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Decision & Reasoning:

The Supreme Court of the Slovak Republic, as the appeal court, examined the contested decision of the Regional Court and the proceedings that preceded it and concluded that the Regional Court's decision should be amended, on the following grounds.

The Respondent stated in reasoning of the decision that the Appellant's grounds, as set out, could be considered irrelevant, with reference to the new directive on questions of religion published by the 'New China' agency, according to which neither individuals nor organisations may force citizens to profess any religion, and the authorities may not draw a distinction between believers and non-believers.

The Supreme Court, in contrast to the Regional Court, considered the Respondent's conclusion to be ill-founded. In the first place, the Respondent took no account at all in its decision of the objective element of the Appellant's fear, since it failed to analyse the situation in the country of origin in the decision from the perspective of the position of the Falun Gong movement and the attitude of the state authorities towards the movement's members and completely failed to characterise the country, and in particular whether it can be considered a safe country where it would be possible to seek proper protection by legal means against a gross violation of fundamental rights and freedoms by the state authorities.

With regard to knowledge of the situation and relations in China, the Supreme Court held that it was ultimately impossible to exclude the possibility that the Appellant's claims were based on the truth. From this perspective, the Supreme Court held that the Respondent's conclusion that the Appellant could not be considered persecuted within the meaning of the Asylum Act, which was also upheld by the Regional Court, appeared unsustainable.

The Supreme Court nonetheless agreed that it was necessary to distinguish between asylum applicants who falsely claimed membership of a movement from those who actually practised a given way of life and as a result of this were threatened with persecution by the state authorities in the country of origin, although not even the fact that those who falsely professed membership of the movement were in the overwhelming majority should lead to indiscriminate conclusions that claims concerning activities connected with the movement were (always) false.

Despite the predominance of false claims, it was necessary to judge each case individually and to take its specific circumstances into account.

In the case in hand, the Appellant claims to be a member of the Falun Gong movement and to have followed its practices for 3 years (before leaving the country). Her knowledge of the movement's philosophy, the movement's founders, its aims and symbols cannot be considered superficial and in the opinion of the Supreme Court the Appellant's statement regarding these facts (before both the Respondent and the Regional Court) was not contrary to the Respondent's information about the movement in the country of origin.

The Supreme Court also disagreed with the Regional Court's opinion concerning the Appellant's credibility. According to the Supreme Court, the Appellant's statements throughout the administrative proceedings were consistent and free of internal contradictions. According to the Supreme Court, her first statement made at the time of her arrest (on 3.12.2004) in the Adamov ? Gbely Police Station, (when she is supposed to have said that her reason for leaving the country was that she wanted to make money and to find work) should not be emphasised to such an extent for the purposes of providing an explanation, since in all subsequent statements (in a total of three interviews in proceedings before the Respondent) she did not deviate from the reasons for which she was applying for asylum. Her claims were comprehensible, consistent and free of internal contradictions.

Argumentation such as this can be used only in a subsidiary capacity in situations where there are also other circumstances showing that the facts claimed by the Appellant are not true. A statement of this kind, which the Appellant, moreover, denies making, should lead to conclusions as to her credibility.

The Respondent's conclusion that the Appellant's claims about participating in Falun Gong practices were false, which was also upheld by the Regional Court, was therefore judged by the Supreme Court to be unconvincing.

In this context, the Supreme Court also drew attention to the evidence presented by the Appellant in the appeal proceedings regarding the summons to the People's Court in Beijing in a criminal case of 'Demeaning of national symbols through misuse by a false religion', (which was submitted after the decision of the Respondent in the case), which proves her claim of persecution for membership of the Falun Gong movement.

Concerning the possible persecution of the Appellant due to her participation in Falun Gong activities, the Supreme Court considered it important for the Respondent to assess and qualify in subsequent proceedings cases where the asylum applicant cannot objectively be considered a member of a particular political, religious or other segment of the population in the country of origin, but it is beyond doubt that for certain reasons she is associated by the state authorities of that country with the segment of the population in question and therefore suffers discrimination or persecution.

The provisions of Section 13 of the Asylum Act do not provide a clear answer to this question, but the Supreme Court held that it was necessary to examine whether or not the Applicant is persecuted in the country of origin for reasons foreseen in the Asylum Act, or whether she is at risk of such persecution.

At the same time, the Court noted that, in view of the Appellant's expressed fears of arrest over her participation in the Falun Gong with reference to the state authorities' repression of people practising Falun Gong, as well as with reference to evidence submitted by the Appellant in the appeal proceedings (the summons to the People's Court in Beijing), these claims will have to be assessed not only in terms of evaluating the grounds for her fear, but also in terms of assessing the position of the Appellant, and whether she can be considered as a person who belongs to a

particular social group and whether it is possible to speak of persecution for membership of a particular social group in the case of people following the practices of the Falun Gong.

In this context, the Supreme Court considered it important to point out that the Asylum Act does not define the concept of a particular social group (note: now defined in Section 19a(4)(e) of the Asylum Act). A particular social group within the meaning of Section 8 of the Asylum Act is a group of people who are who share a common characteristic, which is objectively given or perceived as such by society. This characteristic usually has an innate, unchangeable form or is otherwise fundamental to human identity, conscience or the exercise of the human rights of the persons affected.

It is therefore usually a group of people of similar social origin or status, social habits and customs, or of a similar sexual orientation, who are in a minority due to their otherness.

Outcome:

The Supreme Court amended the decision of the Regional Court in Bratislava No. 9 Saz 19/2005-143 of 20.12.2006, setting aside the decision of the Respondent, Ref. No MU-9907/PO-?/2004 of 1.3.2005, and referred the case back to the Respondent.

Attachment(s):



[L.L. proti MU MVSR.pdf](#)[1]

National / Other Legislative Provisions:

[Slovakia - Zákon 480/2002 Zb. o azyle a o zmene a doplnení niektorých zákonov \(Act No 480/2002 on asylum and amending certain other acts\) - § 8](#) [2]

Links:

[1]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/L.L.%20proti%20MU%20MVSR.pdf>

[2] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8132>