

Spain - High National Court, 3 November 2010, 555/2009

Country of Decision:

Spain

Country of Applicant:

Bangladesh

Date of Decision:

03-11-2010

Citation:

555/2009

Court Name:

High National Court

Keywords:

Persecution Grounds/Reasons

Race

Nationality

Inhuman or degrading treatment or punishment

Armed conflict

Discrimination

Humanitarian considerations

Stateless person

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [4] > [Art 2 \(c\)](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 9](#) [5] > [Art 9.1 \(a\)](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 10](#) [6] > [Art 10.1 \(c\)](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 10](#) [6]

Headnote:

The applicant sought asylum in Spain claiming to have suffered persecution in Bangladesh on the grounds of membership of a group (the Beharies) determined by its ethnic identity. This persecution intensified when the war with Pakistan broke out. The Ministry of Interior refused the application which was appealed by the applicant to the High National Court. This court examined if persecution under the 1951 Refugee Convention could be established, beyond a case of discrimination.

Facts:

The applicant was born and lived in a refugee camp in Dhaka. He was part of the ethnic group of 'Beharies'. Being a member of this group resulted in the applicant being denied basic human rights. He also lacked documentation and education.

After the outbreak of the war with Pakistan, the Beharies became particularly isolated and had no opportunities to overcome this situation. Therefore, the applicant decided to flee. He entered Spain in 2007 claiming that he suffered persecution in Bangladesh on the grounds of membership of a group (the Beharies) determined by its ethnic identity.

The Ministry of Interior refused the application, declaring that the facts alleged did not amount to persecution according to the 1951 Refugee Convention. Moreover, the facts alleged reflected a situation of statelessness.

Decision & Reasoning:

The High National Court stated that, even though the case fell under the scope of statelessness, that did not constitute an obstacle to obtaining protection, as the 1951 Refugee Convention is also applicable to stateless persons. The case could constitute persecution on the grounds of nationality since this concept is not confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, national minority or even race.

In undertaking this examination the Court considered a report issued by the UNHCR on this specific case stating that the 'membership of the Beharies ethnic group is the reason why the applicant can't be returned to his country of origin'.

Once all these factors were taken into account, the Court ruled that the persecution alleged wasn't sufficiently proven and, even though discrimination against the applicant was undoubtedly proven, this discrimination did not amount to persecution as defined by the 1951 Refugee Convention.

Nevertheless, the applicant could be granted residence in Spain for humanitarian considerations as a consequence of the serious conflict in his country of origin and the actual risk of suffering inhuman or degrading treatment in case the applicant was returned.

Outcome:

The appeal was partially successful: refugee status was refused and a residence permit in Spain was granted for humanitarian reasons.

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>