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Country of Decision:

Spain

Country of Applicant:

Syria

Date of Decision:

15-12-2015

Citation:

STS 5211/2015 de 15 de Diciembre de 2015.

Court Name:

Supreme Court, Chamber for Contentious-Administrative proceedings, Section III.

Keywords:

Accommodation centre
Credibility assessment
Internal armed conflict
Refugee Status
Relevant Documentation
Subsidiary Protection

Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Recital 4](#) [4]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 14](#) [6]

Headnote:

When addressing asylum claims, refugee status must be recognised when there is a well-

founded fear of persecution for any of the reasons foreseen in the 1951 Refugee Convention. Assessment of an asylum request fundamentally needs careful consideration of the facts and personal circumstances of the asylum seeker, as well as an analysis of the nature of the risk. The criteria of this test does not have to be restrictive, it is sufficient that the competent authority has a rational belief that the requirements are met for the purpose of receiving refugee status.

Facts:

The appellant is a Syrian woman from the Suni strand. She alleges her country of origin detained, beat and interrogated her after a demonstration. Furthermore, due to her humanitarian activities in the city of Homs she suffered persecution which forced her to flee the country towards Lebanon and then Spain.

Upon arrival, she filed an asylum application that was rejected by the Spanish Ministry of Home Affairs. However, due to the extraordinary nature of the Syrian conflict, the Ministry found it fitting to grant her subsidiary protection.

This decision was brought before the National High Court which reaffirmed the Ministry's conclusions. They reached the conclusion based on insufficient evidence to corroborate her claim and therefore it could not be established that she was being persecuted.

Decision & Reasoning:

The Supreme Court considers that after taking into account the applicant's claim, the reports by United Nations High Commissioner for Refugees (UNHCR) and Asociación Comisión Católica Española de Migración (ACCEM), as well as the special circumstances of the Syrian conflict, the decision taken by the Ministry of Home Affairs and reaffirmed by the National High Court, does not hold.

The Supreme Court argues that the National High Court committed an error of law when basing its decision not to grant refugee status under the assumption that the factual account was generic. In doing so, it failed to take into account the report provided by UNHCR which concluded that the appellant was included in one of the groups at risk due to her religious affiliation. It also failed to assess the report by ACCEM, which highlighted the detailed and accurate testimony she gave of her activities before the outbreak of the war, the humanitarian activities in defense of human rights that led to her arrest, and her escape from Syria accompanied by her brother with the help of members of the "Free Army".

The Supreme Court further recalls that as it is clear from its case law, the provisions of the 12/2009 Act of the 30th of October, regulation of the right of Asylum and Subsidiary Protection, must be interpreted in accordance with the Convention relating to the Status of Refugees of 1951 and European Union law. When addressing asylum claims, therefore, the refugee status must be recognised when there is a well-founded fear of persecution for any of the reasons foreseen in the 1951 Refugee Convention and it be based on an assessment of the facts and personal circumstances of the asylum seeker, as well an analysis of risk.

The criteria of this test does not have to be restrictive, it is sufficient that the competent authority has a rational belief that the requirements are met for the purpose of receiving refugee status.

As the Court finds there is evidence that supports the applicant's claim and that together with her testimony, she meets the requirements established by national and international legislation, the

Court decides to revoke the resolution that denied her asylum application and only granted subsidiary protection. The Court instead, gives her full recognition as a refugee.

Outcome:

The Supreme Court upheld the judgment and revoked the resolution by the Ministry of Home Affairs.

Observations/Comments:

The Court places a special emphasis on clarifying that there is no need to present full documentary evidence of persecution, but considers it necessary to present at least circumstantial evidence. It also sets the standard to be followed when considering whether an applicant is entitled to refugee status, which should not be based on restrictive criteria. It is deemed sufficient if the competent authority considers that the requirements for refugee status are met.

This case summary was written by Mariella De la Cruz Taboada, law student at Universidad Autónoma de Madrid (Autonomous University of Madrid).

This case summary was proof read by Fiorella Volonnino, a GDL student at BPP University.

Attachment(s):



[TS Sala III - Asilo para Refs Sirios - 10 dic. 2015 SP and RS .pdf](#)[7]

Other sources cited:

UNHCR Report of 22nd of October 2013.

UNHCR Report of 30th of May 2014.

Asociación Comisión Católica Española de Migración Report (no date given)

National / Other Legislative Provisions:

[Spain - Constitution - Art 13\(4\)](#) [8]

[Spain - Asylum Law 12/2009 - Art 3](#) [9]

[Spain - Asylum Law 12/2009 - Art 28](#) [10]

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#Rec%202>
- [5] <https://www.asylumlawdatabase.eu/node/453>
- [6] https://www.asylumlawdatabase.eu/node/453#toc_68
- [7] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/TS%20Sala%20III%20-%20Asilo%20para%20Refs%20Sirios%20-%2010%20dic.%202015%20SP%20and%20RS%20.pdf>
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7455>
- [9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7487>
- [10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/spain-asylum-law-122009-art-28>