UK - Court of Appeal, 24 April 2002, S & Ors v Secretary of State for the Home Department [2002] EWCA Civ 539

Country of Decision:
United Kingdom

Country of Applicant:
Croatia

Date of Decision:
24-04-2002

Citation:
[2002] EWCA Civ 539

Court Name:
Court of Appeal

Keywords:
Country of origin information
Individual assessment

Relevant Legislative Provisions:
European Union Law > EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004 [1] > Art 4 [2]

Headnote:
This case concerned Country Guidance case law and the Court of Appeal?s direction on its application in subsequent asylum claims (see judicial guidance in comments section below).

Facts:
Seven of the eight applicants were Croatian Serbs, the eighth was an ethnic Hungarian married to a Serb. Each had appealed against the refusal of asylum and had an individual hearing and decision from an adjudicator (now referred to as Immigration Judge), two had succeeded at first instance and six had had their initial cases refused. Appeals to the Immigration Appeal Tribunal (IAT) were lodged by the unsuccessful applicant and by the Secretary of State for the Home Department against the allowed appeals.

All eight of the appeals were listed and heard together by the IAT.

This group listing was unusual in this jurisdiction, and was designed to provide guidance to the adjudicators at first instance on similar cases and to provide for consistency of decsion making in the jurisdiction.

The IAT dismissed all eight appeals. They all appealed for permission to appeal to the Court of Appeal and all of their applications relied on the absence of any reference in the lead determination to reports by the Special Rapporteur of the United Nations Commission on Human Rights.

All eight applicants were granted permission to appeal.

Decision & Reasoning:
Although there was some confusion as to whether or not the reports were actually before the Tribunal when the determination was drafted, the court held that they may have made a difference to the outcome of the applicants appeals.

Outcome:
All eight appeals were remitted to the Tribunal for a fresh conisderation.

Subsequent Proceedings :
SK (Return - Ethnic Serb) Croatia CG * [2002] UKIAT 05613 promulgated as Country Guidance made fresh findings dismissing the appeals. The concluding words were ??, unless the situation deteriorates to a significant extent or special circumstances can be shown in an individual case, no ethnic Serb should be able to establish a claim under either Convention.?

Observations/Comments:
Decision of the Court:

27. The stance taken by the IAT here, to lay out a determination intended in effect to be binding upon the appellate authorities as to the factual state of affairs in Croatia absent a demonstrable change for the worse vis-à-vis the plight of Serbs, to an extent sacrifices the second principle to the first. By no means entirely: an applicant will of course be heard on any facts particular to his case, and (as the IAT made clear) evidence as to any deterioration in the state of affairs in Croatia would be listened to. Otherwise, however, the debate about the conditions in Croatia generally affecting Serbian returnees or potential returnees has been had and is not for the present to be had again.

28. While in our general law this notion of a factual precedent is exotic, in the context of the IAT?s responsibilities it seems to us in principle to be benign and practical. Refugee claims vis-à-vis any particular State are inevitably made against a political backdrop which over a period of time, however long or short, is, if not constant, at any rate identifiable. Of course the impact of the prevailing political reality may vary as between one claimant and another, and it is always the appellate authorities? duty to examine the facts of individual cases. But there is no public interest, nor any legitimate individual interest, in multiple examinations of the state of the backdrop at any particular time. Such revisits give rise to the risk, perhaps the likelihood, of inconsistent results; and the likelihood, perhaps the certainty, of repeated and therefore wasted expenditure of judicial and financial resources upon the same issues and the same evidence.

29. But if the conception of a factual precedent has utility in the context of the IAT?s duty, there must be safeguards. A principal safeguard will lie in the application of the duty to give reasons with particular rigour. We do not mean to say that the IAT will have to deal literally with every point canvassed in evidence or argument; that would be artificial and disproportionate. But when it

determines to produce an authoritative ruling upon the state of affairs in any given territory it must in our view take special care to see that its decision is effectively comprehensive. It should address all the issues in the case capable of having a real as opposed to fanciful bearing on the result, and explain what it makes of the substantial evidence going to each such issue. In this field opinion evidence will often or usually be very important, since assessment of the risk of persecutory treatment in the milieu of a perhaps unstable political situation may be a complex and difficult task in which the fact-finding tribunal is bound to place heavy reliance on the views of experts and specialists. We recognise of course that the IAT will often be faced with testimony which is trivial or repetitive. Plainly it is not only unnecessary but positively undesirable that it should plough through material of that kind on the face of its determination.

Country Guidance Cases, (indicated by CG) have since been fully adopted into UK jurisprudence and failure to follow such guidance in the absence of significant factual changes can amount to an error of law (see UK case of R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982).

In the case of NA v UK (App.no. 25904/07) 6th August 2008 the European Court of Human Rights? statement that it was in principle, legitimate to assess risk using ?risk factors? as identified by the AIT in a country guidance case has been taken as limited endorsement of the UK?s increasing number of Country Guidance cases and lists of risk factors.

The practise is not without difficulty; individual applicants can be swamped by the court?s desire to offer comprehensive guidance (PO (Nigeria) v Secretary of State for the Home Department [2011] EWCA Civ 132).

Although developed as a system to deal with a situation which had become stable after the civil war in the former Yugoslavia, it is less useful when the circumstances in a country change more rapidly.

Attachment(s):

UK_052 Judgment.pdf[3]

Links:
[1] http://www.asylumlawdatabase.eu/en/content/qualification-directive
[2] http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD
[3] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UK_052%20Judgment.pdf