

UK - Court of Appeal, 29 April 2009, Y and Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362

Country of Decision:

United Kingdom

Country of Applicant:

Sri Lanka

Date of Decision:

29-04-2009

Citation:

[2009] EWCA Civ 362

Additional Citation:

[2009] HRLR 22

Court Name:

Court of Appeal

Keywords:

Torture

Inhuman or degrading treatment or punishment

Previous persecution

Protection

Relevant Legislative Provisions:European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [2] > [Art 15 \(b\)](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [2]

Headnote:

Art 3 of the European Convention on Human Rights may be engaged in suicide cases where the fear giving rise to the risk of suicide is not objectively well-founded.

Facts:

The applicants were Sri Lankan brother and sister who had been tortured by security forces as suspected Liberation Tigers of Tamil Eelam (LTTE) members or sympathisers. In addition to the torture inflicted on them while in detention their immediate and extended family had been touched by state violence and they had lost family members in the tsunami which devastated parts of Sri Lanka in 2004. Both suffered from post traumatic stress disorder and depression. They had lost a series of appeals brought on the grounds that they would be at risk of persecution or face Art 3 breaches.

Permission to appeal to the Court of Appeal was granted so the court could consider one issue. ?5.. where, as here, an accepted history of shocking state violence and abuse has been held not to create an entitlement to humanitarian protection because the fear of repetition is not well-founded, does that finding necessarily carry over into the assessment of the risk of suicide? The fifth proposition in *Re J(J v Secretary of state for the Home Department [2005] EWCA Civ 629* suggests that it does; but it must be arguable that, in relation to suicide, what frequently matters is whether there is a real and overwhelming fear, not whether it is well-founded.?

There was extensive psychiatric evidence which satisfied the court of the reality of the mental distress of the applicants, even though the fear was now not well-founded.

Decision & Reasoning:

The court identified an ?ancillary principle? to the fifth principle in the case of *J* (see separate summary in this database), which required that in cases involving the risk of suicide the fear would be objectively well founded.

The court held that even if the fear was not objectively well- founded, if there was an independent basis, which could lie in past trauma and as in the instant case, where the same authorities remained in power, a real risk could be established.

?16 One can accordingly add to the fifth principle in *J* that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, as such as to create a risk of suicide if there is an enforced return,?

Outcome:

Appeals allowed.

Observations/Comments:

Paragraph 136 of the UNHCR Handbook provided for an exception to the cessation clauses whereby a refugee who had or whose family had suffered atrocious treatment in the past would not cease to be a refugee if there was regime change in his country. While UNHCR's position is unchanged, little deference is paid to this paragraph now. The decision in Y has resonances of the humanitarian concerns of paragraph 136, but is clearly more restrictive. The facts in this case were extreme and probably very few individuals will present with such horrific histories of persecution and loss.

Attachment(s):



[UK_064 Judgment.pdf](#)[4]

Links:

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

[2] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD)

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD>

[4] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UK_064%20Judgment.pdf