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## **UK - House of Lords, 11 October 2010, R (Bagdanavicius) v Secretary of State for the Home Department (UKHL) [2005] UKHL 38**

**Country of Decision:**

United Kingdom

**Country of Applicant:**

Lithuania

**Date of Decision:**

11-10-2010

**Citation:**

[2005] UKHL 38

**Additional Citation:**

[2005] 2 WLR 1359, [2005] INLR 422, [2005] 2 AC 668, [2005] HRLR 24, [2005] Imm AR 430, [2005] UKHRR 907, [2005] 4 All ER 263

**Court Name:**

House of Lords

**Keywords:**

Actor of persecution or serious harm  
Actors of protection  
Non-state actors/agents of persecution  
Persecution (acts of)

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**Relevant Legislative Provisions:**

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]

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

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**Headnote:**

The House of Lords confirmed that in addition to establishing a real risk of harm, the applicant

would also have to show that their state has failed to provide reasonable protection.

**Facts:**

The applicants were Lithuanian nationals. They were married and had a 3-year-old son. The husband was of Roma ethnic origin; the wife was not. As a result of this they were subjected to persistent harassment and violence in particular at the hands of the wife's brother and his various associates. They left Lithuania in 2002 and claimed asylum immediately on arrival in the United Kingdom. Their claims were refused and certified as being 'clearly unfounded'. They challenged the certification by Judicial Review.

**Decision & Reasoning:**

The applicants argued that the Secretary of State had applied the wrong legal test in assessing their claim for protection against removal under Art 3 of the European Convention on Human Rights (ECHR). They argued that in order to succeed that they need establish only a real risk of harm on return to Lithuania.

The House of Lords dismissed the appeal finding 'any harm inflicted by non-state agents will not constitute Art 3 ill-treatment unless in addition the state has failed to provide reasonable protection. If someone is beaten up and seriously injured by a criminal gang, the member state will not be in breach of Art 3 unless it has failed in its positive duty to provide reasonable protection against such criminal acts.'

**Outcome:**

The appeal was dismissed.

**Observations/Comments:**

The House of Lords did not comment on guidance provided by the Court of Appeal in the same case for assessing cases where the ill treatment feared is from non-state actors. An edited version of the guidance is set out in a [separate summary](#) [4]. This guidance has been subsequently applied in IM (Sufficiency of Protection) Malawi [2007] UKAIT 00071 and AW (Sufficiency of Protection) Pakistan [2011] UKUT 31(IAC) (see separate summary).

**Attachment(s):**

 [Bagdanavicius.pdf](#)[5]

**Links:**

- [1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [2] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [4] <https://www.asylumlawdatabase.eu/en/case-law/uk-court-appeal-11-november-2003-r-bagdanavicius-v-secretary-state-home-department-ca-2005>
- [5] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Bagdanavicius.pdf>