

UK - House of Lords, 15 February 2006, Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5

Country of Decision:

United Kingdom

Country of Applicant:

Kosovo

Sudan

Date of Decision:

15-02-2006

Citation:

[2006] UKHL 5

Additional Citation:

[2006] 2 AC 426, [2006] UKHL 05, [2006] UKHL 5, [2006] 2 WLR 397

Court Name:

House of Lords

Keywords:Internal protection

Headnote:

In assessing whether an applicant could obtain internal protection to avoid persecution, decision makers should consider whether it would be unreasonable or unduly harsh to expect the applicant to relocate to another part of their country. Decision makers should not make the assessment by comparing the conditions in the area of internal relocation to international human rights law standards or the conditions in the country of refuge. Rather, the starting point should be the guidance contained in the UNHCR Guidelines on International Protection (July 2003). Where the persecution emanated from the state all relevant factors had to be considered. It could not be said that there was no option of an internal relocation alternative on the basis of the presumption that the state can act throughout its territory.

Facts:

All four applicants were denied refugee status on the ground that there was considered to be a part of their country where they would have no well-founded fear of persecution and in which it would be neither unreasonable nor unduly harsh for them to relocate. The first applicant was an Albanian Kossovan from Mitrovica in Kosovo who had been displaced by Serbian ethnic cleansing. The Secretary of State asserted that he could relocate to Pristina. The three other applicants were all black Africans from Darfur in Sudan, who had either suffered or would suffer persecution at the hands of marauding Arab bands, that the Khartoum government encouraged, was complicit in or did not restrain. The Secretary of State asserted that all three could relocate to Khartoum, but they claimed that they would face persecution or discrimination there.

Decision & Reasoning:

The House of Lords dismissed Januzi's appeal and allowed the other appeals, remitting them for further consideration by the Tribunal.

The House approved the following approach for assessing internal relocation: "[t]he decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so?."

The main point of dispute related to the standards which should be considered when assessing whether applicants could reasonably relocate to a different part of their country. In particular, whether the conditions in the relocation area satisfied the basic norms or civil, political and socio-economic rights; whether there was an international standard below which it would be unreasonable to expect the applicant to live; and whether a comparison would have to be made between the standards in the country of potential refuge and those in the appellant's country of origin.

Consequently, the House of Lords found that that no standard was set in the Refugee Convention for the circumstances in which relocation would be reasonable and a wide range of sources of international law were therefore considered. The argument that international standards provided the appropriate comparator, in particular whether the basic norms of civil, political and socio-economic rights which had to be attained in the place of relocation, was rejected for five reasons.

Firstly, that there was nothing in the Refugee Convention itself from which such an interpretation could be derived and that the Refugee Convention is not directed to defining the rights in the country of the applicant's nationality who may have a safe haven free from persecution.

Secondly whilst the preamble to the Refugee Convention does invoke the Charter of the United Nations 1945 and the Universal Declaration of Human Rights, the thrust of the Convention relates to the equal treatment of refugees so as to provide effective protection in the country of refuge. Apart from protection from persecution, the Convention is not directed at the level of rights prevailing in the applicant's country of nationality.

Thirdly, [Article 8 of the Qualification Directive](#) [1] made no reference of international standards, containing only a provision that internal protection would be available in a part of the country where the applicant had no risk of being persecuted or of suffering serious harm and the applicant could reasonably be expected to go there. The provision also stated that at the time of the decision regard should be had to "the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant?."

Fourthly, there was not, in any event, a uniformity of international practice nor of professional and

academic opinion to show that any customary rule of international law had been established on this point.

Finally it was pointed out that adoption of such a rule would give the Refugee Convention unintended and anomalous consequences. The example was given of an individual fleeing persecution from a country that is very poor, with huge deprivation and little respect for human rights. If he were to be recognised as a refugee because the circumstances in a potential area of relocation amounted simply to the 'drawbacks of living in a poor and backward country' (but not harsh enough to amount to persecution) then he would by chance be using the Refugee Convention to escape the deprivation to which all in his home country are subject.

The Court suggested that the [UNHCR Guidelines on International Protection \(July 2003\)](#) [2] were an appropriate starting point for deciding what would amount to unreasonable or unduly harsh relocation. The guidelines refer to respect for fundamental human rights, in particular non-derogable rights, to economic survival including issues of access to land, resources protection, family links or a social safety net, trivial or cultural difficulties or conditions of severe hardship and were deemed to be helpful in concentrating attention on the standards prevailing in the country of nationality.

The Sudanese applicants put forward a second argument alleging that, as the persecution emanated from the state, there could be no possibility of safe or reasonable internal relocation as there would be a presumption that the state is entitled to act throughout the country. However, the idea of such a presumption was rejected as the sources of persecution could emanate from a variety of people with varying degrees of proximity or accountability to the state itself. The House of Lords preferred the 'taking account of all relevant circumstances pertaining to the claimant and his country of origin' in considering any relocation options. It was acknowledged that the more closely the persecution was linked to the state and the greater the level of control exercised by the state over the persecutor, the more likely it was that the claimant would be at risk of harm or particularly vulnerable in another part of the State.

Outcome:

The House of Lords dismissed Januzi's appeal and allowed the other appeals, remitting them for further consideration by the Tribunal on the basis of inadequate reasoning.

Attachment(s):

 [Januzi.pdf](#)[3]

Other sources cited:

[UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, paragraph 91](#) [4]

[UNHCR Guidelines on International Protection of 23 July 2003](#) [2]

Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Convention on the Law of Treaties.

Hathaway, J. *The Law of Refugee Status* (1991)

Goodwin-Gill, G. *The Refugee in International Law*, 2nd ed (1996)

H Storey, "The Internal Flight Alternative Test: The Jurisprudence Re-examined," (1998) 10 *International Journal of Refugee Law*, 499

Hathaway, J. "International Refugee Law: The Michigan Guidelines on the Internal Protection Alternative", 1999

Hathaway, J. and Foster, M. "Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination" in *Refugee Protection in International Law*, ed Feller, Türk and Nicholson, (2003)

Links:

[1] [http://www.asylumlawdatabase.eu/en/Qualification%20Directive#Art 8 QD](http://www.asylumlawdatabase.eu/en/Qualification%20Directive#Art%208)

[2] <https://www.asylumlawdatabase.eu/en/content/en-unhcr-guidelines-international-protection-%E2%80%9Cinternal-flight-or-relocation-alternative-july>

[3] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Januzi.pdf>

[4] <https://www.asylumlawdatabase.eu/en/content/en-unhcr-handbook-procedures-and-criteria-determining-refugee-status>