

[Home](#) > UK - House of Lords, 18 October 2006, Fornah v. Secretary of State for the Home Department (linked with Secretary of State for the Home Department v. K) [2006] UKHL 46

UK - House of Lords, 18 October 2006, Fornah v. Secretary of State for the Home Department (linked with Secretary of State for the Home Department v. K) [2006] UKHL 46

Country of Decision:

United Kingdom

Country of Applicant:

Sierra Leone

Date of Decision:

18-10-2006

Citation:

[2006] UKHL 46

Additional Citation:

[2007] 1 AC 412, [2007] 1 All ER 671, [2006] 3 WLR 733

Court Name:

House of Lords

Keywords:

Refugee Status
Discrimination
Female genital mutilation
Gender Based Persecution
Inhuman or degrading treatment or punishment
Membership of a particular social group
Persecution (acts of)
Persecution Grounds/Reasons

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 28](#) [3]International Law > [1951 Refugee Convention](#) [1] > [Art 34](#) [4]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 10](#)

Headnote:

The case concerned a woman who feared return to Sierra Leone because she would face gender specific persecution in the form of Female Genital Mutilation (FGM). The issue was whether she was entitled to recognition as a refugee because she feared persecution on account of her membership of a particular social group. Her appeal was allowed on the basis that women in Sierra Leone and, alternatively, uninitiated women who had not been subjected to FGM in Sierra Leone, were particular social groups.

Facts:

This case is a decision in the second of two linked appeals.

Fornah was a woman from Sierra Leone. She claimed that she was entitled to recognition as a refugee because she would be subjected to FGM if returned to Sierra Leone. Before coming to the United Kingdom, the applicant had had to move from her home to shelter from the civil war at her father's village in Sierra Leone. At the age of 15 she overheard discussions of plans to initiate her into womanhood by her undergoing FGM. She ran away and was captured by rebels and made pregnant through repeated rape by the rebel leader. She escaped to the United Kingdom with the help of her uncle.

The Secretary of State for the Home Department accepted the applicant was telling the truth and that she would be subjected to inhuman and degrading treatment if she was returned to Sierra Leone, granting protection under Art 3 of the European Convention on Human Rights. The applicant appealed on the basis that she should be recognised as a refugee.

Decision & Reasoning:

The issue in the appeal was whether the applicant could establish a claim that she faced persecution on account of her membership of a particular social group. The applicant argued that she was a member either of the particular social group of 'women in Sierra Leone' or, alternatively, 'uninitiated women in Sierra Leone who had not been subjected to FGM.' An intervention by UNHCR supported the interpretation of the 1951 Convention that the applicant put forward.

The Court of Appeal had held by a majority that the applicant had not established that she was a member of a particular social group for a number of reasons based on its interpretation of previous United Kingdom caselaw. These reasons included that the practice of FGM in Sierra Leone was not discriminatory in a way that set those who are subjected to it apart from others in society and that FGM could not be used as the defining characteristic of the particular social group because it was inseparable from the persecution feared.

In the House of Lords, Lord Bingham held that the Court of Appeal had been mistaken. He found that '[o]n that evidence, I think it clear that women in Sierra Leone are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist even if FGM were not practised, although

FGM is an extreme and very cruel expression of male dominance?. Consequently, women in Sierra Leone were a particular social group. Baroness Hale agreed with this analysis.

Lord Hope allowed the appeal on the basis that the applicant was the member of a particular social group of uninitiated women in Sierra Leone. Lord Rodger and Lord Brown agreed with both Lord Bingham and Lord Hope

Importantly Lord Bingham approved the *UNHCR Guidelines* on membership of a particular social group. Further, he held that Art 12 of the Qualification Directive 'read literally...is in no way inconsistent with the trend of international authority. When assessing a claim based on membership of a particular social group national authorities should certainly take the matters listed into account. I do not doubt that a group should be considered to form a particular social group where, in particular, the criteria in sub-paragraphs (i) and (ii) are both satisfied. Sub-paragraph (iii) is not wholly clear to me, but appears in part to address a different aspect. If, however, this article were interpreted as meaning that a social group should only be recognised as a particular social group for purposes of the Convention if it satisfies the criteria in both of sub-paragraphs (i) and (ii), then in my opinion it propounds a test more stringent than is warranted by international authority. Lord Brown expressly agreed with Lord Bingham on this point.

Outcome:

The applicant's appeal was allowed.

Subsequent Proceedings :

None.

Observations/Comments:

The appeal was linked with the appeal in [Secretary of State for the Home Department v. K](#) [9], which is separately summarised. Tribunals have declined to follow Lord Bingham and Lord Brown's interpretation of the relevant provisions of Article 12 of the Qualification Directive in SB (PSG ? Protection Regulations ? Reg 6) Moldova CG [2008] UKAIT 0002, PO (Trafficked women) Nigeria CG [2009] UKAIT 00046 and AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC).

However, the decision in Fornah has been applied by Tribunals in SK (FGM ? ethnic groups) Liberia CG [2007] UKAIT 00001, FK (FGM ? Risk and Relocation) Kenya CG [2007] UKAIT 00041, FM (FGM) Sudan CG [2007] UKAIT00060, VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049, FB (Lone women - PSG ? internal relocation ? AA (Uganda) considered) Sierra Leone [2008] UKAIT 00090, MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC) and SA (Divorced woman ? illegitimate child) Bangladesh CG [2011] UKUT 00254(IAC).

Attachment(s):

 [SSHD v K and Fornah.pdf](#)[10]

Other sources cited:

Universal Declaration of Human Rights,

UNHCR Executive Committee Conclusions on Refugee Women and International Protection, 18 October 1985,

UNHCR Guidelines on Membership of a Particular Social Group,

UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud, 17 March 2006,

Prohibition of Female Circumcision Act 1985,

Prohibition of Female Genital Mutilation (Scotland) Act 2005,

European Parliament Resolution A5-0285/2001, 20 September 2001,

UK Asylum Policy Instruction "Gender Issues in the Asylum Claim" Canada "Women Refugee Claimants Fearing Gender-Related Persecution", 13 November 1996,

"Gender-Related Persecution (Article 1A(2): An Australian Perspective", Department of Immigration and Multicultural and Indigenous Affairs, 2001T Alexander Aleinikoff,

Protected characteristic and social perceptions: an analysis of the meaning of "membership of a particular social group", UNHCR's Global Consultations on International Protection, ed Feller, Turk and Nicholson (2003), pp 263-311,

James C Hathaway, The Rights of Refugees under International Law (2005, pp 255-256) and The Law of Refugee Status (1991), pp 164-166,

G S Goodwin-Gill, The Refugee in International Law (1996), p 361,

Canada - Compendium of Decisions, Immigration and Refugee Board, February 2003, pp 31-35.

National / Other Legislative Provisions:

[ICCPR](#) [11]

[ICCPR - Art 7](#) [12]

[ICCPR - Art 23.1](#) [13]

[UNCAT](#) [14]

[UNCAT - Art 1](#) [15]

[UNCAT - Art 16](#) [16]

[UNCRC](#) [17]

[UNCRC - Art 37 \(a\)](#) [18]

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/1951-refugee-convention#28>

[4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#34>

[5] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[6] https://www.asylumlawdatabase.eu/node/195#toc_12

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

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>

[9] <https://www.asylumlawdatabase.eu/en/case-law/uk-house-lords-18-october-2006-secretary-state-home-department-v-k-linked-fornah-v>

[10]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/SSHD%20v%20K%20and%20Fornah.pdf>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/299>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/315>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/314>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/308>

[15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/312>

[16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/313>

[17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/106>

[18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/311>