

UK - Immigration Appeal Tribunal, 3 October 2000, EG, Colombia, [2000] UKIAT 00007

Country of Decision:

United Kingdom

Country of Applicant:

Colombia

Date of Decision:

03-10-2000

Citation:

[2000] UKIAT 00007

Additional Citation:

[2001] 1 WLR 549, [2000] INLR 549

Court Name:

Immigration Appeal Tribunal

Keywords:

Membership of a particular social group

Persecution Grounds/Reasons

Political Opinion

Relevant Legislative Provisions:European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [2] > [Art 10.1 \(d\)](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [2] > [Art 10.1 \(e\)](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [2] > [Art 10.2](#) [2][UNHCR Handbook](#) [3] > Para 80

Headnote:

In assessing claims based on political opinion, a broad approach needed to be adopted to ensure that the object and purpose of the 1951 Refugee Convention was met. Political opinion could be actual or imputed and had to be assessed in the context of the society that the

applicant had fled. Political opinion should not be restricted to issues relating to party politics nor, in the context of persecution non-state actors of persecution, was it helpful to identify those who were on the side of the forces of 'law and order'.

Facts:

The applicant was a law student from Colombia. She had helped her university tutor, who was also a local politician, at a legal advice clinic and given advice to a farmer who was receiving extortion threats from FARC. She received numerous threats from FARC at her home and workplace and considered that the Colombian police could not provide her with protection. Her university tutor was kidnapped, but she later discovered, had been later released after a ransom was paid.

Decision & Reasoning:

The Tribunal dismissed the appeal. It found that, although, at the time of the claim, the Colombian authorities could not provide protection, the applicant would no longer be at risk from FARC. It also rejected the applicant's claim to be a member of a particular social group.

However, despite this being unnecessary for the determination of the appeal, the Tribunal gave extensive guidance on how to assess claims based on political opinion.

The Tribunal noted that political opinion could be actual or imputed. It considered that, in assessing this ground, it was necessary to adopt a broad construction to ensure that the Refugee Convention meets its object and purpose which includes the rights to freedom of conscience, of opinion and expression and assembly. It noted that political opinion can relate to government or policy but is not solely pertaining to party politics.

The Tribunal found that this broad approach must operate given that the Convention ground can be established in respect of non-state actors as well as state actors of persecution. It approved Hathaway's formulation that: 'Essentially any action which is perceived to be a challenge to governmental authority is therefore appropriately considered to be the expression of a political opinion'.

The Tribunal further found that in imputed political opinion cases the focus of enquiry moves from the persecuted to the persecutor. Context was important in assessing this aspect of a claim and therefore the 'political' nature of a claimant's actions or opinions must be assessed in the context of his or her country of origin. *'That the definition of the adjective 'political' must always be to some extent malleable flows from the fact that the nature of the power relationships and transactions that compose what is political vary from society to society. Sometimes political opinion may be located in a particular type of expression or activity, e.g. wearing western clothes in a highly fundamentalist Muslim country with strict social mores; sometimes not. In society A where trade unions adopt a combative posture towards the government, membership of a trade union may be tantamount to holding a political opinion; in society B it may not be so. The risk of extortion threats from a criminal gang will not normally be on account of political opinion, but in some societies where criminal and political activities heavily overlap, the picture may be different. Persons who hold posts in governmental agencies of the state at central or local level will not normally be capable of having political opinions attributed to them by groups opposed to the government. But if for example there is a major armed conflict going on between the authorities and guerrilla groups (e.g. Islamic fundamentalists in Algeria in the 1990s) then it may be that they will have attributed to them the political opinion of being on the government's side rather than the fundamentalist Islamic side.'*

Applying this analysis to the facts of the case, in the situation of Colombia at the time, the Tribunal held that the applicant would not have been imputed a political opinion by FARC. Unlike her university tutor she had no political profile.

Outcome:

Appeal dismissed.

Observations/Comments:

Non-state actors: Acero-Garces disapproved

Attachment(s):



[Judgment.pdf](#)[4]

Other sources cited:

J. Hathaway, Law of Refugee Status, 1991; G. Goodwin-Gill, The Refugee in International Law (1ST ed. 1983); in D. Anker, Law of Asylum in the United States, 1999, Macdonald and Blake, Immigration Law and Practice; Grahl-Madsen, The Status of Refugees in International Law, 1966; J. Yves-Carlier, Who is a Refugee, 1997

Links:

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

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

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

[4] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Judgment_10.pdf