
UK - The Queen on the Application of JM, RE, KW, MY, IK, Y, PU (Claimants) and the Secretary of State for the Home Department (First Defendant)

Country of Decision:

United Kingdom

Country of Applicant:

Albania

Nigeria

Date of Decision:

09-07-2015

Additional Citation:

CO/499/2015, CO/377/2015, CO/624/2015, CO/625/2015, CO/678/2015, CO/747/2015, CO/814/2015

Court Name:

High Court of Justice, Queen's Bench Division, Administrative Court

Keywords:

Accelerated procedure

Detention

Personal circumstances of applicant

Trafficking in human beings

Vulnerable person

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

Headnote:

The High Court approved of the claimant asylum seekers' and the defendant Secretary of State's consent order for settlement. The defendant accepted responsibility for failing to remove the claimants from the DFT, despite indicators that they were vulnerable and not suited to the DFT, and for failing to inform them about the National Referral Mechanism (NRM).

Facts:

This consent order addressed a series of cases known as the Helen Bamber Foundation cases. The group of claimants brought an action for judicial review of the defendant's refusal to transfer them out of the DFT. According to Article 9 of the Enforcement Instructions and Guidelines of the DFT, no person who has been subject to trafficking may be detained save for exceptional circumstances. Where a person discloses information to a Designated First Responder (in this case, the defendant) that suggests they were subjected to trafficking, the NRM must then undertake a trafficking assessment to determine whether the person's claims are founded or not and whether they should be removed from the DFT.

The evidence given by representative claimants IK, Y and PU showed that they had highlighted their vulnerability to the defendant. IK and Y both provided accounts of being at risk of human trafficking in their home countries at the initial asylum screening interview. PU had shown bodily scars which proved she had been burned and beaten. Despite this, they had all still been retained under the DFT. In refusing to transfer, the defendant stated in relation to IK that she had not actually been subjected to trafficking, she merely feared it. In relation to Y, the defendant did not make reference to the claimant's assertions of trafficking, and did not acknowledge that more time would be needed to gather the supporting evidence. In relation to PU, the defendant stated that scars were not independent corroborating evidence of torture, however did not raise the fact that they were indicators of such.

The claimants were eventually transferred out of the DFT by order of Lang J in February 2015. In seeking judicial review of the defendant's refusal to transfer out, the claimants argued that they had highlighted their vulnerability to the defendant sufficiently clearly to warrant an assessment by the NRM, which the defendant failed to do. They argued that the defendant breached its obligation under section 149 of the Equality Act 2010 by not ensuring adequate protection of those who have vulnerable status.

Late on 29 June 2015, the Court was informed of the defendant's proposals for settlement, having admitted that its failure to transfer the claimants had not been appropriate. The draft consent order created by both parties was brought before the Court for approval.

Decision & Reasoning:

The role of the Court was to determine whether this consent order was appropriate to the proper resolution of the case. The definition of vulnerable status was borrowed from Ouseley J's 2014 judgment on the DFT as meaning one who is or may be a "victim of torture, significant ill treatment, human trafficking, or may be suffering from mental a disorder or other physical or mental impairment which may affect their ability to present their claims in DFT". Accepting that it can be difficult to concretely establish vulnerable status, "indicators" of vulnerability would be sufficient. In addition, according to the NRM's guidance document, NRM referral does not only occur where the person self-identifies as a victim; it can also occur where the person is unaware that trafficking has taken place and perceive themselves to be in a "normal" situation. The criteria for NRM referral can therefore be characterised as broad. Some "threshold of reasonable suspense" falling short of full corroboration is appropriate.

Furthermore, both IK and PU had been deemed to have satisfied the referral criteria of the Helen Bamber Foundation. This Foundation is a not for profit organisation that provides medical and psychological care for vulnerable asylum seekers. Where a person meets their referral criteria, they must be removed from the DFT, so that their case can be given the time and attention it requires. Despite IK and PU having met this criteria, they were still not released from the DFT.

The evidence given by the claimants to the defendant therefore made it clear that they should have been referred to the NRM for a full assessment as to the existence of vulnerable status instead of being kept on the DFT. In addition, the claimants had not even been informed of the NRM. Their retention in the DFT was therefore a breach of the defendant's duty to protect vulnerable persons, breaching both its own policy and Article 4 ECHR. The defendant was in full agreement with these assertions.

Outcome:

The consent order was accepted by the Court. In the course of reviewing the DFT, the defendant must pay attention to its duty to ensure proper treatment of vulnerable persons. To demonstrate this, the defendant must publish an Equality and Diversity Policy outlining their commitment to such.

Subsequent Proceedings :

The task of assessing damages was transferred to the London County Court, with Y's damages being stayed until the outcome of separate judicial review proceedings concerning his age (he claimed to be 15 years old, however he had no documentation to support this).

Observations/Comments:

This case serves as a clear illustration of the classic criticisms directed towards the DFT. The DFT has long been criticised as failing to perform the very essence of its function; filtering the simple cases from the complex ones. A glance at the facts of this case highlights this; Y claimed to be just 15, was not in possession of his own travel documents, had his flights paid for by "Sam", and had rectal bleeding. All of the elements of his case point towards unsuitability for fast processing, yet this was the opposite of what the defendant did.

The DFT has been suspended since 2 July 2015 following a string of challenges attacking the legality of its operations. Time will tell what changes will be made when it is eventually reinstated and whether cases like these will continue to be brought before the court room.

Attachment(s):



[HC trafficking DFT unlawful Final Order and Statement PU.pdf\[2\]](#)

Other sources cited:

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

This case summary was written by Joanna Gilbert, law graduate of University College Cork, Ireland and a graduate of LLM European Law from Leiden University.

National / Other Legislative Provisions:

[UK - Equality Act 2010](#) [3]

Links:

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

[2]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/HC%20trafficking%20DFT%20unlawful%20F>

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8406>