

United Kingdom - Arf v Secretary of State for the Home Department, 12 January 2017

Country of Decision:

United Kingdom

Country of Applicant:

Sierra Leone

Date of Decision:

12-01-2017

Citation:

Arf v Secretary of State for the Home Department [2017] EWHC 10 (QB)

Additional Citation:

Case No. HQ12X05323

Court Name:

The High Court of Justice, Queen's Bench Division (HHJ Coe QC as judge)

Keywords:

Detention
Female genital mutilation
Inhuman or degrading treatment or punishment
Medical Reports/Medico-legal Reports
Refugee Status
Torture
Trafficking in human beings
Vulnerable person

Headnote:

This case primarily dealt with the lawfulness of a prolonged period of detention in the context of whether there was a reasonable prospect of deportation and also of evidence of both current mental illness and previous torture and trafficking.

Facts:

Born in Sierra Leone, the Claimant suffered sexual abuse, abduction, rape and female genital

mutilation, before being trafficked via Gambia to the UK into an abusive marriage. Once in the UK, the Claimant had children, got divorced, became alcohol dependent and committed a number of criminal offences. The Claimant had entered the UK on a visa as a partner of a UK resident and was granted indefinite leave to remain after her marriage, but became liable to deportation in light of her criminal offences.

The Claimant was detained after completion of her prison sentence, due to the risk of absconding and reoffending. As signs of her mental illness became more apparent she was then transferred to a mental health facility, albeit still being detained under the Government's immigration powers. After almost two and a half years in detention, the Claimant was finally released, her claim of trafficking was accepted and she was granted asylum.

The Claimant argued that the total period of detention by the Defendant was unlawful as:

- Under the common law *Hardial Singh* principles she was detained when there was no reasonable prospect of her deportation, she was detained for longer than necessary and no steps were taken to expedite her deportation.
- The Defendant had committed a public law error in not properly applying its own policy guidance on persons unsuitable for detention, because the Claimant was suffering from a serious mental illness and also because there was evidence that she had been both trafficked and tortured, so she should only have been detained in very exceptional circumstances.
- The circumstances of the Claimant's detention whilst suffering severe mental illness breached her human rights under Arts 3 and 8 of ECHR.
- The failure to investigate the allegation of trafficking on a timely basis gave rise to a breach of Art 4 of ECHR.

The Defendant countered that:

- There was a sufficiently reasonable prospect of removal throughout the detention period.
- The Claimant was not suffering from serious mental illness which could not be satisfactorily managed in detention.
- There were issues with the Claimant's credibility and there was no independent evidence that she had been tortured.

The risk of the Claimant absconding and reoffending made her sufficiently exceptional to justify ongoing detention and there was no breach of her Art 3, 4 or 8 ECHR rights.

Decision & Reasoning:

The Court held that the defendant ignored contrary evidence and rather than making a proper assessment of the Claimant's health or of the prospects of her removal within a reasonable timescale and undertaking an appropriate balancing exercise based on this and her risk of absconding and reoffending the Defendant formed an intention to detain the Claimant and gave no consideration to alternatives. In fact the Claimant's offending was in part caused by her mental illness, her offences were minor and she had not breached immigration law.

On the common law claim, the Court found for the Claimant under the *Hardial Singh* principles. The Defendant should not just have considered whether the Claimant was fit to be detained, but

rather whether or not the reasonableness of the length of detention and/or maintaining that detention was outweighed by the effect on the Claimant's mental health, which (despite conflicting medical evidence) the Court found was significantly worsened by her detention. Also relevant was the fact that allegations of past torture and trafficking had been raised and that the Defendant did not expedite deportation. The Court determined that once the Claimant had been transferred to hospital under the Mental Health Act the conclusion must have been that there was no reasonable prospect of removal within a reasonable period and from that point on her detention was unlawful under immigration law.

On the public law claim the Court also found for the Claimant, ie that the Defendant had acted irrationally, as there was no evidence that the Defendant considered the impact of the Claimant's mental state and her deterioration at all, the applicable policy was not even mentioned until the Claimant had been in detention for a year, and once the allegation of past torture became known the Claimant should have been released. The very exceptional circumstances test for detention in the light of these facts was a very high threshold that had not been met in this case.

The Court found that there was a breach of the Claimant's Art 3 rights to the extent that she was inappropriately treated as somebody showing disruptive behaviour rather than mental illness. The Court found that the Claimant's report of being trafficked was improperly ignored.

Outcome:

The Court found for the Claimant on the above grounds and that in respect of the public law error the Claimant is entitled to substantive damages.

Subsequent Proceedings :

The damages claim was subject to a private (confidential) settlement. The judgment is now final.

Observations/Comments:

Hardial Singh principles applied.

Das was extensively cited and followed by the Court.

Distinguishing facts from *AXD v The Home Office [2016] EWHC 1133* is that in this case the Court found clearer evidence of the Claimant's mental illness and also considered that the Claimant's criminality was at the lower end of the range. As in *AXD* however, the Court found a breach of the *Hardial Singh* principles and that damages were likely to be substantial.

This case summary was written by Jonathan Thomas, LLM student in Immigration Law at Queen Mary's University.

Attachment(s):

[ARF v SSHD \[2017\] EWHC 10 \(QB\) unlawful detention.docx\[1\]](#)

Other sources cited:

Guidance and information on detention and removals for officers dealing with enforcement immigration matters within the UK: Chapter 55

National / Other Legislative Provisions:

[UK - Immigration Act 1971](#) [2]

[Mental Health Act 1983](#) [3]

Links:

[1]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/ARF%20v%20SSHD%20%5B2017%5D%20>

[2] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7857>

[3] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/mental-health-act-1983>