

ECtHR - NA v UK, Application No. 25904/07

Country of Applicant:

Sri Lanka

Date of Decision:

06-08-2008

Citation:

Application no. 25904/07

Court Name:

European Court of Human Rights - Fourth Section

Keywords:[Access to the labour market](#) [1][Individual assessment](#) [2][Indiscriminate violence](#) [3][Inhuman or degrading treatment or punishment](#) [4]**Relevant Legislative Provisions:**

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 2](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 19](#) [9]**Headnote:**

This case concerned the removal of a Sri Lankan national of Tamil ethnicity to Sri Lanka. The Court held that he belonged to a specific group all of whose members were at risk of ill-treatment and so could not be returned. The Applicant did not need to show that he was more at risk than others in this group. The case concerned a situation of generalized violence in Sri Lanka.

Facts:

The Applicant was a Sri Lankan national of Tamil ethnicity who alleged that if he returned to Sri Lanka he was at real risk of ill-treatment contrary to Art. 3 ECHR by the Sri Lankan army and the Liberation Tigers of Tamil Eelam (LTTE). The Applicant's asylum claim and fresh claim were rejected by the UK authorities and removal orders were set. However, an injunction from the High Court to stay removal was granted but subsequently the UK court refused the Applicant permission to seek judicial review of the Secretary of State's decision. This application to the ECtHR was made at a time when the Court was receiving an increasing number of requests for interim measures from Tamils who were being returned to Sri Lanka. Rule 39 interim measures were applied in twenty-two cases to stop removal from the UK at that time (2007). The UK government suggested to the Court in light of the difficulties posed by the increasing numbers of Rule 39 requests by Tamils that this could best be addressed by way of adopting a lead judgment by the Court. The Court subsequently in 2008 applied Rule 39 in respect of three hundred and forty-two Tamil Applicants regarding removal from the UK to Sri Lanka. Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the Applicant alleged that if returned to Sri Lanka, he was at real risk of ill-treatment. The Applicant was represented by the AIRE centre before the ECtHR.

Decision & Reasoning:

The Court found that it was more appropriate to deal with the complaint under Art. 2 in the context of its examination of the related complaint under Art. 3. The Court noted that the right to asylum is not contained in its Convention or Protocols but that expulsion may give rise to an issue under Art. 3 and hence engage the responsibility of the State under the Convention. The ill-treatment the Applicant alleges must attain a minimum level of severity if it is to fall within the scope of Art. 3. This assessment is relative, depending on all the circumstances of the case. The assessment must also be a rigorous one and a full and *ex nunc* examination is required. The general circumstances including whether there is a general situation of violence are relevant as well as the Applicant's personal circumstances. The Court noted that a general situation of violence will not normally of itself entail a violation of Art. 3 in the event of an expulsion (para. 114). At this stage the Court examined the foregoing case-law of its Court on this issue of generalized violence concluding that (Para. 115) "the Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Art. 3". However the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

The Court went on to state "Exceptionally, however, in cases where an Applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the Applicant establishes that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see *Saadi v. Italy*, cited above, § 132). In those circumstances, the Court will not then insist that the Applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in light of the Applicant's account and the information on the situation in the country of destination in respect of the group in question" (Para.116).

The Court went on to then assess the objective information before it and set out some of the Court's principles with respect to approaching country information (Para 118- 122). The Court stated in assessing risk that it is in principle legitimate, when assessing the individual risk to returnees, to carry out the assessment on the basis of the list of "risk factors" as drawn up by the national authorities. The Court noted that the AIT in the UK was careful to avoid the impression

that these risk factors were a 'checklist' or exhaustive (Para. 129). The Court itself on the basis of the evidence before it did not consider it necessary to identify any additional risk factors which had not been duly considered by the domestic authorities or raised by the parties in their observations. The Court found that the information placed before it pointed to systemic torture and ill-treatment by the Sri Lankan authorities of Tamils who will be of interest to them in their efforts to combat the LTTE. On the basis of this evidence, the Court therefore found that, in the context of Tamils being returned to Sri Lanka, the protection of Article 3 of the Convention enters into play when an Applicant can establish that there are serious reasons to believe that he or she would be of sufficient interest to the authorities in their efforts to combat the LTTE as to warrant his or her detention and interrogation. It also took into account additional risks of detention and interrogation at the airport with respect to returns via Colombo. The Court said that though it cannot be said that there is a generalized risk to Tamils from the LTTE in a government controlled area such as Colombo, individuals may be able to demonstrate a real risk to them from the LTTE in Colombo if they have a high profile such as opposition activities or as those seen by the LTTE as renegades or traitors (Para 137).

Taking into account the Applicant's individual circumstances, the Court found that there would be no real risk of ill-treatment contrary to Art. 3 by the LTTE if returned to Colombo. In assessing the risk to the Applicant from the Sri Lankan government due regard has to be taken for the deterioration of the security situation in Sri Lanka and the corresponding increase in general violence and heightened security. The Court took into account a number of risk factors including the Applicant's scars, the fact he was a male Tamil of 32 years of age, probably existence of his last arrest and detention, his six arrests on the basis of suspicion of LTTE involvement and the fact he had made an asylum claim abroad, among others. The general climate of violence had to be taken into account as well and the Court found that there were substantial grounds for finding that the Applicant would be of interest to the Sri Lankan authorities in their efforts to combat the LTTE. In such circumstances there would be a violation of Art. 3 if the Applicant were to be returned to Sri Lanka.

Outcome:

Violation of Art. 3 ECHR was found. No separate issue arose under Art. 2.

Subsequent Proceedings :

The CoE Committee of Ministers closed the examination of the execution of the judgment in March 2009, as it considered that adequate measures had been adopted in this respect. On the individual level, the UK indicated that the applicant would be able to remain in the United Kingdom with either refugee status or discretionary leave to remain.

On the general level, the CM noted that the UK Border Agency updated its Operational Guidance Note on Sri Lanka highlighting the key points of the Court's Judgment. Furthermore, internal guidance was provided to the personnel of the Border Agency to examine applications from Sri Lanka in accordance with the judgment.

Observations/Comments:

This case was very important as it was the first time that the Court accepted the possibility that a situation of generalized violence could in itself mean that all returns should be prevented to prevent real risk of a violation of Art. 3 ECHR. A case summary by the Netherlands Institute of Human Rights on this case is available [here](#) [10].

Case Law Cited:

ECtHR - Garabayev v Russia, Application No. 38411/02

ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI

[UK - House of Lords, 6 July 2000, Horvath v. Secretary of State for the Home Department \[2000\] UKHL 37 \[11\]](#)

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\) \[12\]](#)

[ECtHR - HLR v France \(Application no. 24573/94\) \[13\]](#)

[ECtHR - Salah Sheekh v The Netherlands \(Application no. 1948/04\) - resource \[14\]](#)

UK - NM and others (Somalia) CG [2005] UKIAT 00076

ECtHR - Sultani v France (Application no. 45223/05) - (UP)

ECtHR - Müslim v Turkey (Application no. 53566/99)

ECtHR - Mamatkulov Askarov v Turkey, Applications nos. 46827/99 and 46951/99

ECtHR - Jabari v Turkey, 11 July 2000, (Application no. 40035/98)

ECtHR - Hilal v United Kingdom, Application no. 45276/99

ECtHR - Bahaddar v The Netherlands (Application no. 25894/94)

UK - LP (Sri Lanka) CG [2007] UKAIT 00076)

ECtHR - Üner v. the Netherlands [GC], Application No. 46410/99

ECtHR - Said v Netherlands, Application No. 2345/02

ECtHR - Venkadajalasarma v the Netherlands, Application No. 58510/00

ECtHR - Kleyn and Others v. the Netherlands [GC], Application Nos. 39343/98, 39651/98, 43147/98 and 46664/99

ECtHR - McFeeley and others v. the United Kingdom, Application No. 8317/78

ECtHR - Milosevic v. the Netherlands, Application No. 77631/01

ECtHR - MPP Golub v. Ukraine, Application No. 6778/05

ECtHR - N. v. Finland, Application No. 38885/02

ECtHR - Pellegrini v. Italy, Application No. 77363/01

ECtHR - Selvanayagam v. the United Kingdom (dec.), Application No. 57981/00

ECtHR - T. v. the United Kingdom [GC], Application No. 24724/94

ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos. 9214/80, 9473/81 and 9474/81

ECtHR - Thampibillai v. the Netherlands, Application No. 61350/00

UK - PT (Risk ?bribery ? release) Sri Lanka CG [2002] UKIAT 03444

UK - PS (LTTE ? Internal Flight ? Sufficiency of Protection) Sri Lanka CG [2004] UKIAT 0297

UK - R. v the Secretary of State for the Home Department, Ex parte five Sri Lankan Tamils [2007] EWHC 3288 (Admin)

Netherlands - Council of State, M. and N. Elgafaji v Staatssecretaris van Justitie (the Deputy Minister of Justice)

[ECtHR - Saadi v Italy, Application no. 37201/06](#) [15]

Attachment(s):



[NA v United Kingdom.pdf](#)[16]

Other sources cited:

H. v. the United Kingdom, no. 10000/82, Commission decision of 4 July 1983;

UNHCR Position on the International Protection Needs of Asylum Seekers from Sri Lanka (?the UNHCR Position Paper?);

UK Home Office Reports and Country Guidance Notes on Sri Lanka, UN Special Rapporteur on Torture press release following visit to Sri Lanka dated October 2007;

US State Department Report 2007 Country Report on Human Rights Practices;

Canadian Immigration and Refugee Board Publication on basis of an information request;

publication from the Independent International Group of Eminent Persons;

Amnesty International 2007 Annual Report;

Human Rights Watch Report ?Return to War: Human Rights under Siege?;

HRW Report 2008 ?Recurring Nightmare: State Responsibility for Disappearances and Abductions in Sri Lanka;

International Crisis Group Report ?Sri Lanka?s Return to War: Limiting the Damage: Asia Report No. 146? Report by Medical Foundation for the Care of Victims of Torture 2007 report ?Torture once again rampant in the Sri Lankan conflict? BBC news sources and press release from Sri Lankan government.

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

UK - Immigration Act 1971

UK - Immigration Rules

UK - Nationality

Immigration and Asylum Act 2002 (Commencement No.4) (Amendment) (No.2) Order 2003

UK - Nationality, Immigration and Asylum Act 2002

UK - Immigration and Asylum Act 1999

UK - Asylum (Designated States) (No.2) Order 2003 (Statutory Instrument 2003/1919)

UK - Asylum (Designated States) (Amendment) (No.2) Order 2006

UK - Human Rights Act 1998

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2477

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A40

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A41

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43

[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_4

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

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

[9] https://www.asylumlawdatabase.eu/node/195#toc_75

[10]

<http://sim.law.uu.nl/slm/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/844c9d5e76d5c1f6c1257>

[11] <https://www.asylumlawdatabase.eu/en/case-law/uk-house-lords-6-july-2000-horvath-v-secretary-state-home-department-2000-ukhl-37>

[12] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

[13] <https://www.asylumlawdatabase.eu/en/content/ecthr-hlr-v-france-application-no-2457394>

[14] <https://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-resource>

[15] <https://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-italy-application-no-3720106>

[16]

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/NA%20v%20United%20Kingdom_0.pdf