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Country of Applicant:

Sri Lanka

Date of Decision:

07-03-2000

Court Name:

European Court of Human Rights (Third Section)

Keywords:

[Effective remedy \(right to\)](#) [1]

[Credibility assessment](#) [2]

[Manifestly unfounded application](#) [3]

[Medical Reports/Medico-legal Reports](#) [4]

[Protection](#) [5]

[Personal circumstances of applicant](#) [6]

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[Procedural guarantees](#) [9]

[Refugee Status](#) [10]

[Membership of a particular social group](#) [11]

[Torture](#) [12]

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 2](#) [14]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 3](#) [15]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 8](#) [16]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 13](#) [17]

Headnote:

The case involved a Sri Lankan asylum seeker whose application was rejected in Germany, and upon seeking asylum in the UK, was rejected on the basis of the Dublin Convention and that his application corresponded to Germany. The Court found no breach of a Convention obligation from the UK by its decision to remove him to Germany.

Facts:

The case originated with an application lodged against the UK alleging that the UK's conduct in ordering his removal to Germany, from where he will be summarily removed to Sri Lanka, would be a violation of Art. 2, 3, 8, and 13 ECHR.

The applicant lived in Jaffna, Sri Lanka until May 1995, an area controlled by the LTTE, a Tamil terrorist organization. The LTTE forcibly took the applicant from 1993 until June 1994 from time to time for a few days to mend their radio equipment and later held him prisoner for more than 3 months. In May 1995, after escaping the LTTE settlement, he was arrested by the Sri Lankan army which suspected him of being an LTTE member. Soldiers beat him and held him in detention until September 1995, during which he was tortured and ill-treated. He was released after his uncle paid a bribe and later experienced beatings by a pro-Government Tamil group, and was tortured in October 1995 by police officers until he was released in January 1996, again after his uncle paid a bribe.

Shortly after his release, the applicant left Sri Lanka and arrived in Germany on 10 February 1996, after which he claimed asylum but his application was rejected, as was his appeal. The Administrative Court noted that the actions of the LTTE could not be attributed to the Sri Lankan State and he would be sufficiently safe from political persecution if he returned to the south of Sri Lanka. In September 1997, the applicant left Germany and travelled to the United Kingdom via Italy, and then claimed asylum. In January 1998, the UK requested that Germany accept responsibility for his asylum request pursuant to the Dublin Convention, which Germany agreed, after which his removal was ordered. The applicant applied for judicial review but was refused, and then he appealed to the Court of Appeal, which held that the Secretary of State was entitled to conclude that the German authorities adopted an approach within the range of a response acting in good faith to implement its Convention obligations. The applicant's leave to petition the House of Lords was refused and the Secretary of State refused to exercise his discretion to grant leave to remain on compassionate grounds. Removal directions to Germany were issued in August 1998. In September 1998, after an examination while the applicant was in detention, a medical report was issued concluding that his scars and psychological symptoms were those of persons who had been detained and beaten. The applicant made a second application for judicial review, submitting this medical evidence and challenging the certification of Germany as a safe third country, as it failed to recognize refugee status when persecution emanated from non-State agents, but leave was refused. His removal was set for October 1998 and then deferred. A second medical report was prepared in July 1999 also confirming that his scars and symptoms were consistent with the applicant's account. In August 1999 the applicant requested that the Secretary of State reconsider his decision, following the July 1999 decision *Adan, Subaraskan and Aitesgeur*, but the Secretary stated he was not willing at this stage to consider the merits of his claim, as he was pursuing an appeal in respect of *Adan*.

Decision & Reasoning:

1. Alleged Breach of Article 3

The Court reiterated that the obligation under Article 3 does not depend on the source of the risk

involving the direct or indirect responsibility of the receiving state. Art. 3 protections may extend to situations where the danger emanates from non-public officials or from consequences to health from the effects of serious illness. The Court explained that it must subject all the circumstances surrounding the case to rigorous scrutiny.

In this case, the applicant was threatened with removal to Germany, an intermediary country which is also a Contracting State, where a deportation order was previously issued to remove him to Sri Lanka. The Court found that this indirect removal does not, however, affect the responsibility of the UK to ensure that the applicant is not exposed to torture or ill-treatment, nor can the UK rely automatically on the Dublin Convention arrangement. When examining the risk of ill-treatment in Sri Lanka, the Court noted that it did not hear substantial arguments from either the UK or German Governments, yet the materials presented by the applicant (medical reports, photographs of his scars, and reports by Amnesty International, UN Special Rapporteur, and the US Department of State) gave it concerns as to the risks faced by the applicant should he be returned. The Court also found that there was considerable doubt that the applicant would either be granted a follow up asylum hearing or that a second claim would be granted in Germany after noting 1) that the German Administrative Procedure Act places strict limitations on the admission of new evidence, 2) the previous decision of the Bavarian Administrative Court that the applicant lacked credibility would be given significant weight in a further consideration, and 3) the German authorities would not take into account for the purposes of asylum or protection under Art. 3 pursuant to section 53(4) of the Aliens Act that the applicant would be at risk from LTTE members or individual security force members acting outside Sri Lankan law. It found there would be little likelihood of his claims succeeding under section 53(4) Aliens Act.

The Court noted, however, that the apparent gap in protection resulting from the German approach to non-State agent risk is met to some extent by the application of section 53(6) Aliens Act, although the Government had not provided any example of this section being applied to a failed asylum seeker in a second asylum procedure. The Court was satisfied, on the basis of assurances by the German Government, that the applicant's claims, if accepted by the authorities, could fall within the scope of section 53(6) and attract its protection. It found that it was largely a matter of speculation that the authorities might still reject the case. Therefore to the extent that there was a possibility of the applicant's removal, it was not shown to be sufficiently concrete. The Court was further not persuaded by the applicant's argument concerning the high burden of proof placed on asylum seekers in Germany as preventing a meritorious claim in practice.

In conclusion, the Court found that it was not established that there would be a real risk that Germany would expel the applicant to Sri Lanka in breach of Art. 3, and as such the UK had not failed in its obligation under this provision by deciding to remove the applicant to Germany. Nor was it shown that this decision was taken without regard to the existence of adequate safeguards in Germany to avoid the risk of treatment contrary to Art. 3. Therefore, this part of the application was rejected as manifestly ill-founded pursuant to Art. 35 §§ 3 and 4 ECHR.

2. Alleged Breaches of Articles 2 and 8

The Court found that no separate issues arose under Art. 2 and 8 from those under Art. 3 requiring examination.

3. Alleged Breach of Article 13

The Court considered the applicant's claim that judicial review did not provide an effective remedy as required by Art. 13 because it did not permit any 'anxious scrutiny' to be given to the merits of

his claim, but was confined to considerations of the Secretary of State's application of the Dublin Convention. The Court recalled that the scope of the obligation under Art. 13 varies depending on the nature of the applicant's complaint under the Convention and the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. In previous cases the Court found that judicial review proceedings in the UK were an effective remedy in relation to complaints raised under Art. 3 in contexts of deportation and extradition. As such, it found there was no reason to differ in the present case. The applicant was able to challenge the reasonableness of the Secretary's decision. The Court was satisfied that the substance of the applicant's complaint under the Convention – whether the Secretary of State could order his removal to Germany – did fall within the scope of examination of the English courts, which had power to afford him the relief he sought, and accordingly, his complaint was manifestly ill-founded and must be rejected.

Outcome:

Application inadmissible.

Observations/Comments:

The rationale underpinning T.I. was later overturned in M.S.S v Belgium and Greece.

Case Law Cited:

Germany - German Constitutional Court, FCC of July 2, 1980

UK - Judgment of 23 July 1999 in the case of R. v. Secretary of State for the Home Department ex parte Adan, Subaskaran and Aitsegeur, the Court of Appeal

UK - R. v. the Secretary of State for the Home Department Ex parte Canbolat [1997 1 WLR] 1569

ECtHR - Nsona and Nsona v. the Netherlands, Appl. No. 23366/94, 28 November 1996

[ECtHR - Ahmed v. Austria, Application No. 25964/94, 17 December 1996](#) [18]

[ECtHR - D. v. The United Kingdom, Application No. 30240/96, 2 May 1997](#) [19]

[ECtHR - Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991](#) [20]

[ECtHR - Soering v. The United Kingdom, Application No. 14038/88, 7 July 1989](#) [21]

ECtHR - H.L.R. v. France, Application no. 24573/94

ECtHR - Aksoy v Turkey, Application No. 21987/93

ECtHR - Waite and Kennedy v. Germany [GC], Application No. 26083/94

Attachment(s):

 [T.I. v UK.pdf](#)[22]

Other sources cited:

Amnesty International Report for 1998 concerning Sri Lanka

Report by the Medical Foundation for the Victims of Torture entitled "No Safe Haven: Nigerian, Kenyan and Sri Lankan Torture Victims in the United Kingdom" dated October 1997

Report of the United Nations Special Rapporteur on extra-judicial and summary executions dated 10 March 1998

US Department of State "Sri Lanka Country Report on Human Rights Practices for 1998" dated 26 February 1999

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

UK - Asylum and Immigration Act 1996

UK - Immigration Rules

Germany - The Aliens Act

Germany - The Administrative Procedure Act

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A24

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A46

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[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A82

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

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[10] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192

[11] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A200

[12] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A85

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

[14] https://www.asylumlawdatabase.eu/node/195#toc_4

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

[16] https://www.asylumlawdatabase.eu/node/195#toc_46

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[19] <https://www.asylumlawdatabase.eu/en/content/ecthr-d-v-united-kingdom-application-no-3024096-2-may-1997>

[20] <https://www.asylumlawdatabase.eu/en/content/ecthr-vilvarajah-and-others-v-united-kingdom-application-nos-1316387-1316487-1316587-1344787>

[21] <https://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989>

[22] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/T.I.%20v%20UK.pdf>