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ECtHR - Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991

Country of Applicant:

Sri Lanka

Date of Decision:

30-10-1991

Citation:

European Court of Human Rights, Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991

Court Name:

European Court of Human Rights

Keywords:

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

[Indiscriminate violence](#) [2]

[Inhuman or degrading treatment or punishment](#) [3]

[Return](#) [4]

[Persecution \(acts of\)](#) [5]

[Persecution Grounds/Reasons](#) [6]

[Torture](#) [7]

Headnote:

The five applicants were asylum seekers from Sri Lanka of Tamil ethnicity whose requests were denied in the UK and had been returned to Sri Lanka. The Court rejected their allegations that a breach of Art. 3 due to risk of ill-treatment as well as of a breach of Art. 13 because of ineffective judicial remedy had been committed by the UK.

Facts:

The case originated in five applications against the UK filed with the European Commission of Human Rights by citizens of Sri Lanka, on 26 August 1987 and 16 December 1987. It was referred to the Court on 11 July 1990 by the Commission and on 16 July 1990 by the UK. The request and

application sought a decision as to whether there was a breach by the respondent State of Art. 13 ECHR, and in the request, as to Art. 3 ECHR.

The first applicant, a Sri Lankan citizen of Tamil ethnic origin, experienced a series of events in which he was beaten, detained, and otherwise feared for his and his family's lives. He sought entry to the UK as a visitor in 1987 and requested asylum under the 1951 Refugee Convention but was refused by the Secretary of State because the incidents pertained to the Sri Lankan army's general activities and were found not to constitute evidence of persecution. After seeking leave to apply for judicial review along with the four other applicants, the High Court quashed this decision, but the House of Lords subsequently judged in the Secretary's favour upon appeal when ruling over the proper interpretation of Art. 1 (A)(2) of the 1951 Refugee Convention, as amended. Upon return to Sri Lanka the applicant faced continued incidents which made him fear for his life. Upon appeal the Adjudicator found in the applicant's favour and he was allowed to return to the UK, after which he made a further application for asylum still in consideration at the time of the case. The Secretary of State appealed to the Immigration Appeal Tribunal, but was rejected, and this decision was upheld by the High Court. In 1990 the Court of Appeal dismissed an appeal by the Secretary.

The facts and procedural background of the other four applications were similar.

The applications were lodged with the Commission in 1987, alleging that as young male Tamils they had reasonable grounds to fear that they would be subjected to persecution, torture, arbitrary execution, or inhuman or degrading treatment contrary to Art. 3, and further that they had no effective remedy under UK law in respect of their complaint under Art. 3, contrary to Art. 13. In 1990 the Commission expressed that there had been no breach of Art. 3 but that there had been a breach of Art. 13.

Decision & Reasoning:

1. Alleged Breach of Article 3

The Court first examined the allegations that the applicants removal to Sri Lanka in February 1988 amounted to inhuman or degrading treatment in breach of Art. 3. The Court established that based on *Cruz Varas*, the expulsion by a Contracting State of an asylum seeker may give rise to an Art. 3 issue where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned. It observed, however, that the right to political asylum is not contained in either the Convention or its Protocols and that Contracting States have the right to control the entry, residence, and expulsion of aliens (*See Moustaquim*).

The Court assessed the risk of ill-treatment according to the principles laid out in *Cruz Varas*, those being: (1) The issue is assessed in light of all the material placed before it or, if necessary, material obtained *proprio motu*, (2) The risk must be assessed with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion, though the Court is not precluded from having regard to information which comes to light subsequent to expulsion, and (3) The ill-treatment must attain a minimum level of severity to fall within the scope of Art. 3. The Court found that according to the evidence before it, the situation in the north and east of Sri Lanka had improved by February 1988. While the situation was still unsettled, and the applicants still faced the possibility that they might be detained and ill-treated, it was not established that their personal position was any worse than the generality of other members of the Tamil community or other young male Tamils returning to Sri Lanka. While it was claimed that the second, third, and fourth applicants were in fact subjected to ill-treatment upon their return, there

existed no special distinguishing features that could or ought to have enabled the Secretary of State to foresee this. The fourth and fifth applicants were removed from the UK without identity cards which made travelling more difficult through army checkpoints in Sri Lanka, but this alone did not expose them to real risk sufficient to go beyond the Art. 3 threshold. The Court also attached importance to the knowledge and experience that the UK authorities had in dealing with large numbers of Sri Lankan asylum seekers. In conclusion, it found that substantial grounds were not established for believing that the applicants would be exposed to a real risk of being subjected to inhuman or degrading treatment, and as such there was no breach of Art. 3.

2. Alleged Breach of Article 13

The Court then turned to the allegation that the applicants had no effective remedy in the UK in respect of their Art. 3 complaint as required by Art. 13. It was not disputed that the applicants' claim under Art. 3 was an 'arguable' one on its merits (*See Boyle and Rice*). The Court explained that the effect of Art. 13 is to require the provision of a domestic remedy allowing the competent 'national authority' both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, but Art. 13 does not require any particular form of remedy nor does the effectiveness of a remedy depend on the certainty of a favourable outcome for the applicant (*See Swedish Engine Drivers' Union*). Comparing the case at hand to *Soering*, in which the Court was satisfied with the judicial review proceedings as an effective remedy, the Court found no material difference between the cases to lead it to reach a different conclusion. In *Soering*, the Court was satisfied that English courts could review the 'reasonableness' of an extradition decision in light of the kind of factors relied on by the applicant in the context of Art. 3. In particular, courts determine whether such a decision is tainted with illegality, irrationality, or procedural impropriety. English courts are able in asylum cases to review the Secretary of State's refusal to grant asylum with the same principles of judicial review as in *Soering* and it is the practice in the UK that an asylum seeker will not be removed until proceedings are complete once he has obtained leave to apply for judicial review. While there are limitations to the powers of courts in these proceedings, the Court found they provide an effective degree of control over the decisions and are sufficient to satisfy the requirements of Art. 13. Accordingly, the Court found no breach of Art. 13.

Outcome:

Application denied.

Observations/Comments:

This case shows that there is a high evidentiary threshold for applicants who have been denied asylum to prove that a Contracting Party violated Art. 3. The Court stressed the evidence presented to it when assessing the situation at the time of the asylum application decision and because the risk of ill-treatment was found to be too general and not a specific persecution that the applicants faced, the Court acted with deference to the Contracting Party. This was despite the applicants experiencing ill-treatment upon their return to Sri Lanka.

Case Law Cited:

UK - R. v. Secretary of State for Education and Science, ex parte Avon County Council (Local Government Reports 1991, n° 88, p. 737)

UK - Gaima v. Secretary of State (Immigration Appeals Report 1989)

UK - R. v. Secretary of State, ex parte Yemoh (High Court, 14.7.1988)

ECtHR - Swedish Engine Drivers' Union, Appl. No. 5614/72, 6 February 1976

UK - Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223

ECtHR - Moustaquim v. Belgium, Application No. 12313/86

ECtHR - Boyle and Rice v. the United Kingdom, Application Nos. 9659/82 and 9658/82

ECtHR - Cruz Varas & Others v Sweden (Application no. 15576/89)

UK - House of Lords, R v Secretary of State for the Home Department Ex p Bugdaycay [1987] 1 All ER 940, [1987] AC 514, [1987] 2 WLR 606

UK - R v Secretary of State for the Home Department, Ex parte Jeyakumaran [1994] Imm.A.R. 45

Attachment(s):

 [Vilvarajah_0.pdf](#)[8]

Other sources cited:

Council of Europe:

Assembly of the Council of Europe, Recommendation 293 (1961), Texts Adopted, 30th Ordinary Session, 21-28 September 1961

Assembly of the Council of Europe, Recommendation 434 (1965)

Committee of Ministers, Resolution 67 (14), Yearbook 10

Declaration on Territorial Asylum of 18 November 1977

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

UK - Immigration Act 1971

UK - Statement of Changes in Immigration Rules

House of Commons paper 169 of 9 February 1983 (

UK - Immigration Appeals (Procedure) Rules

UK - Statutory Instruments 1984/2041

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%3A41

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

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490

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[8] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Vilvarajah_0_0.pdf