



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	Secretary of State for the Home Department v. K; Fornah v. Secretary of State for the Home Department
Court Name	House of Lords
Neutral Citation Number	[2006] UKHL 46
Other Citation Number	[2007] 1 AC 412, [2007] 1 All ER 671, [2006] 3 WLR 733
Date Decision Delivered	18 October 2006
Country of Applicant/Claimant	Iran
Keywords	Refugee Status; Persecution grounds: race, religion, nationality, membership of a particular social group, political opinion (actual or imputed)
Head Note (Summary of Summary)	The case concerned a woman who feared return to Sierra Leone because she would face gender specific persecution in the form of Female Genital Mutilation. The issue was whether she was entitled to recognition as a refugee because she feared persecution on account of her membership of a particular social group. Her appeal was allowed on the basis that women in Sierra Leone and, alternatively, uninitiated women who had not been subjected to FGM in Sierra Leone, were particular social groups.
Case Summary (150-500)	
<i>Facts</i>	<p>This case is a decision in the second of two linked appeals.</p> <p>Fornah was a woman from Sierra Leone. She claimed that she was entitled to recognition as a refugee because she would be subjected to FGM if returned to Sierra Leone. Before coming to the UK, the appellant had had to move from her home to shelter from the civil war at her father's village in Sierra Leone. At the age of 15 she overheard discussions of plans to initiate her into womanhood by her undergoing FGM. She ran away and was captured by rebels and made pregnant through repeated rape by the rebel leader. She escaped to the UK with the help of her uncle.</p> <p>The Secretary of State for the Home Department accepted the applicant was telling the truth and that she would be subjected to inhuman and degrading treatment if she was returned to Sierra Leone, granting protection under Article 3 ECHR. The applicant appealed on the basis that she should be recognised as a refugee.</p>
<i>Decision & Reasoning</i>	The issue in the appeal was whether the appellant could establish a claim that she faced persecution on account of her membership of a particular social group. The appellant argued that she was a member either of the particular social group of 'women in Sierra Leone' or, alternatively, 'uninitiated women in



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	<p>Sierra Leone who had not been subjected to FGM', were particular social groups. An intervention by UNHCR supported the interpretation of the 1951 Convention that the appellant put forward.</p> <p>The Court of Appeal had held by a majority that the appellant had not established that she was a member of a particular social group for a number of reasons based on its interpretation of previous UK case law. These reasons included that the practice of FGM in Sierra Leone was not discriminatory in a way that set those who are subjected to it apart from others in society and that FGM could not be used as the defining characteristic of the particular social group because it was inseparable from the persecution feared.</p> <p>In the House of Lords, Lord Bingham held that the Court of Appeal had been mistaken. He found that "[o]n that evidence, I think it is clear that women in Sierra Leone are a group of persons sharing a common characteristic which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist even if FGM were not practised, although FGM is an extreme and very cruel expression of male dominance". Consequently, women in Sierra Leone were a particular social group. Baroness Hale agreed with this analysis.</p> <p>Lord Hope allowed the appeal on the basis that the appellant was the member of a particular social group of uninitiated women in Sierra Leone. Lord Rodger and Lord Brown agreed with both Lord Bingham and Lord Hope.</p> <p>Importantly, Lord Bingham approved the <i>UNHCR Guidelines</i> on membership of a particular social group. Further, he held that Article 12 of the Qualification Directive "read literally...is in no way inconsistent with the trend of international authority. When assessing a claim based on membership of a particular social group national authorities should certainly take the matters listed into account. I do not doubt that a group should be considered to form a particular social group where, in particular, the criteria in sub-paragraphs (i) and (ii) are both satisfied. Sub-paragraph (iii) is not wholly clear to me, but appears in part to address a different aspect. If, however, this article were interpreted as meaning that a social group should only be recognised as a particular social group for purposes of the Convention if it satisfies the criteria in both of sub-paragraphs (i) and (ii), then in my opinion it propounds a test more stringent than is warranted by international authority. Lord Brown expressly agreed with Lord Bingham on this point.</p>
<i>Outcome</i>	The appellant's appeal was allowed.
Subsequent Proceedings	None
EU Legal Provisions Applicable	
Qualification Directive	Article 10



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Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	
Legal Provisions Cited	
1951 Refugee Convention	Article 1(A)2, Chapter III, Chapter IV, Article 28, Article 34
Qualification Directive	
Asylum Procedures Directive	
Reception Conditions Directive	Article 10
Dublin II Regulation	
Returns Directive	
ECHR European Convention on Human Rights	Article 3
CFREU Charter of Fundamental Rights of the European Union	
TFEU Treaty on the Functioning of the European Union	
ICCPR	Article 7 and 23(1)
CRC	Article 37 (a)
CAT	Article 1 and 16
ICESCR	
CEDAW	
ICERD	
UNHCR Handbook	
Geneva Conventions & Additional Protocols	
European Social Charter	

PROJECT PARTNERS: EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) • ASOCIACIÓN COMISIÓN CATÓLICA ESPAÑOLA DE MIGRACIÓN (ACCEM) • CRUZ ROJA ESPAÑOLA • CONSIGLIO ITALIANO PER I RIFUGIATI (CIR)



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ICC Statute	
Case Law Cited	
CJEU Cases Cited	
ECtHR Cases Cited	
Other Cases Cited	<p>R v Secretary of State for the Home Department, Ex p Adan [2001] 2 AC 477; Januzi v Secretary of State for the Home Department [2006] UKHL 5; R v Immigration Appeal Tribunal, Ex p Shah and Islam [1999] 2 AC 629; (Sivakumar) v Secretary of State for the Home Department [2003] UKHL 14;; Sepet v Secretary of State for the Home Department [2003] UKHL 15;</p> <p>Quijano v Secretary of State for the Home Department [1997] Imm AR 227, Suarez v Secretary of State for the Home Department [2002] EWCA Civ 722; Skenderaj v Secretary of State for the Home Department [2002] EWCA Civ 567</p> <p>Secretary of State for the Home Department v Savchenkov [1996] Imm AR 28, R v Immigration Appeal Tribunal, Ex p De Melo [1997] Imm AR 43</p> <p>Chen Shi Hai v Minister for Immigration and Multicultural Affairs (2000) 201 CLR 293; Minister for Immigration and Multicultural Affairs v Khawar (2002) 210 CLR 1; Applicant S v Minister for Immigration and Multicultural Affairs (2004) 217 CLR 387; Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225</p> <p>Australia RRT N97/19046, unreported, 16 October 1997), Thomas v Gonzales 409 F 3d 1177 (9th Cir, 2005), Minister for Immigration and Multicultural Affairs v Sarrazola [2001] FCA 263, Minister of Immigration , Minister of Immigration and Multicultural Affairs v Sarrazola (No 4) [2001] FCA 26 Multicultural Affairs v Sarrazola (No 4) [2001] FCA 263</p> <p>Attorney General of Canada v Ward [1993] 2 SCR 689</p> <p>Compendium of Decisions, Immigration and Refugee Board, February 2003, pp 31-35</p> <p>In re Kasinga (1996) 21 I & N Dec 357, Abankwah v Immigration and Naturalization Service 185 F 3d 18 (2d Cir 1999), Mohammed v Gonzales 400 F 3d 785 (9th Cir 2005), In re Acosta (1985) 19 I & N 211,</p> <p>Austria (GZ 220.268/0-XI/33/00, unreported, 21 March 2002), Re B(PV) [1994] CRDD No 12, 10 May 1994;</p>
Other sources cited	<p>Universal Declaration of Human Rights, UNHCR Executive Committee Conclusions on Refugee Women and International Protection, 18 October 1985, UNHCR Guidelines on Membership of a Particular Social Group, UNHCR</p>



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	<p>position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud, 17 March 2006</p> <p>Prohibition of Female Circumcision Act 1985, Prohibition of Female Genital Mutilation (Scotland) Act 2005,</p> <p>European Parliament Resolution A5-0285/2001, 20 September 2001, UK Asylum Policy Instruction "Gender Issues in the Asylum Claim" Canada "Women Refugee Claimants Fearing Gender-Related Persecution", 13 November 1996, "Gender-Related Persecution (Article 1A(2): An Australian Perspective", Department of Immigration and Multicultural and Indigenous Affairs, 2001, T Alexander Aleinikoff Protected characteristic and social perceptions: an analysis of the meaning of "membership of a particular social group", UNHCR's Global Consultations on International Protection, ed Feller, Turk and Nicholson (2003), pp 263-311, James C Hathaway, The Rights of Refugees under International Law (2005, pp 255-256) and The Law of Refugee Status (1991), pp 164-166, G S Goodwin-Gill, The Refugee in International Law (1996), p 361.</p>
<p>Observations/Comments</p>	<p>The appeal was linked with the appeal in Secretary of State for the Home Department v. K, which is separately summarized. Tribunals have declined to follow Lord Bingham and Lord Brown's interpretation the relevant provisions of Article 12 of the Qualification Directive in SB (PSG – Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 0002, PO (Trafficked women) Nigeria CG [2009] UKAIT 00046 and AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC).</p> <p>However, the decision in Fornah has been applied by Tribunals in SK (FGM – ethnic groups) Liberia CG [2007] UKAIT 00001, FK (FGM – Risk and Relocation) Kenya CG [2007] UKAIT 00041, FM (FGM) Sudan CG [2007] UKAIT00060, VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049, FB (Lone women - PSG – internal relocation – AA (Uganda) considered) Sierra Leone [2008] UKAIT 00090, MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC) and SA (Divorced woman – illegitimate child) Bangladesh CG [2011] UKUT 00254(IAC).</p>