



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>United Kingdom</b>
Case Name/Title	Horvath v. Secretary of State for the Home Department
Court Name	House of Lords
Neutral Citation Number	[2000] UKHL 37
Other Citation Number	[2000] 3 WLR 379, [2000] Imm AR 552, [2001] 1 AC 489, [2000] INLR 239, [2000] 3 All ER 577, [2001] AC 489
Date Decision Delivered	06/07/00
Country of Applicant/Claimant	Slovakia
Keywords	Actor of Protection, Actor of Persecution, Non-state actor of persecution, Persecution, State protection
Head Note (Summary of Summary)	In cases where the applicant fears from persecution from non-state actors, the home state can be judged to provide protection if it has in place a system of domestic protection machinery for the detection, prosecution and punishment of such acts, and there is be an ability and readiness to operate the machinery. Where the line is drawn will depend on the facts of the case.
Case Summary (150-500)	
Facts	The applicant was a Slovak national and a member of the Roma minority. He and his family had faced racially motivated ill-treatment by skinheads. The same was true of other Roma in his neighbourhood. He came to the UK and claimed asylum.
Decision & Reasoning	<p>This case was decided by the House of Lords in the year 2000. It remains the leading authority in the UK on state protection. It provides guidance on assessing cases in which the applicant fears persecution from non-state actors and, in such cases, on the level of protection a state should afford its citizens against such persecution. It is therefore relevant in the approach that the UK courts take to Articles 6 and 7 of the Qualification Directive.</p> <p>All five judges dismissed the appeal on the basis that the applicant was able to obtain state protection from the non-state actors who had ill-treated him.</p> <p>It was held that one of the purposes of the Refugee Convention is to provide surrogate protection to those in fear of harm in their own country. Where the fear is of non-state actors the ability of the refugee's own state to provide protection is crucial and if such protection is not available then there is an obligation on a receiving state to provide surrogate protection. In endeavouring</p>



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	<p>to define what level of state protection is appropriate when the applicant's fear arises from non-state actors, a number of different formulae were put forward. Lord Hope held that:</p> <p>"The primary duty to provide the protection lies with the home state. It is its duty to establish and to operate a system of protection against the persecution of its own nationals. If that system is lacking the protection of the international community is available as a substitute. But the application of the surrogacy principle rests upon the assumption that, just as the substitute cannot achieve complete protection against isolated and random attacks, so also complete protection against such attacks is not to be expected of the home state. The standard to be applied is, therefore, not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals."</p> <p>Lord Clyde held that:</p> <p>"There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actings contrary to the purposes that the Convention requires to have protected. More importantly, there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter of the circumstances of each particular case."</p> <p>Finally, Lord Lloyd of Berwick gave a more succinct definition, holding that the sufficiency of state protection should be measured by "the availability of a system for the protection of the citizen and a reasonable willingness by the state to operate it".</p>
Outcome	The appeal was dismissed
Subsequent Proceedings	
<b>EU Legal Provisions Applicable</b>	
Qualification Directive	Yes
Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	



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<b>Legal Provisions Cited</b>	
1951 Refugee Convention	Article 1A(2)
Qualification Directive	
Asylum Procedures Directive	
Reception Conditions Directive	
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	
CRC	
CAT	
ICESCR	
CEDAW	
ICERD	
UNHCR Handbook	Paragraphs 51, 65
Geneva Conventions & Additional Protocols	
European Social Charter	
ICC Statute	
<b>Case Law Cited</b>	
CJEU Cases Cited	
ECtHR Cases Cited	Osman v. United Kingdom [1998] 29 E.H.R.R. 245



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<p>Other Cases Cited</p>	<p>Adan v. Secretary of State for the Home Department [1999] 1 A.C. 293; R. v. Immigration Appeal Tribunal, Ex parte Shah [1999] 2 A.C. 629R v. Secretary of State for the Home Department, Ex parte Sivakumaran [1988] A.C. 958; R v. Secretary of State for the Home Department, Ex parte Adan [1999] 3 W.L.R. 1274; Ravichandran v. Secretary of State for the Home Department [1996] Imm. A.R. 97; Karanakaran v. Secretary of State for the Home Department; Demirkaya v. Secretary of State for the Home Department [1999] I.N.L.R. 441; Sandralingham v. Secretary of State for the Home Department [1996] Imm. A.R. 97; R v. Immigration Appeal Tribunal, Ex parte Jonah [1985] Imm. A.R. 7.</p> <p>Canada (Attorney-General) v. Ward (1993) 103 D.L.R. (4th) 1;</p> <p>A v. Minister for Immigration and Ethnic Affairs [1998] I.N.L.R.1.</p> <p>Chan Yee Kin v. Minister for Immigration and Ethnic Affairs (1989) 169 C.L.R. 379; Damouni v. Minister for Immigration, Local Government and Ethnic Affairs (1989) 87 A.L.R. 97.</p>
<p>Other sources cited</p>	<p>Charter of the United Nations and the Universal Declaration of Human Rights</p> <p>Joint Position defined by the Council of the European Union on 4 March 1996 (OJ 1996 L63/2)</p> <p>Goodwin-Gill, G. (The Refugee in International Law, 2nd ed. (1996), Hathaway, J. The Law of Refugee Status (Butterworths, 1991), Geoffrey S. Gilbert, Right of Asylum: A Change of Direction, International and Comparative Law Quarterly, Vol. 32, 633</p> <p>Gender Guidelines for the Determination of Asylum Claims in the U.K. (published by the Refugee Woman's Legal Group in July 1998)</p>
<p>Observations/Comments</p>	<p>The applicability of the test set out in Horvath to protection against removal under Article 3 of the ECHR to face ill treatment by non-state actors was considered by the House of Lords in Bagdanavicius &amp; Anor, R (on the application of) v [2005] UKHL 38 (see separate summary).</p>