



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	HK v Secretary of State for the Home Department
Court Name <i>(Both in English and in the original language)</i>	Court of Appeal
Neutral Citation Number	[2006] EWCA Civ 1037
Other Citation Number	
Date Decision Delivered	20 July 2006
Country of Applicant/Claimant	Sierra Leone
Keywords	Credibility, Country of origin information, Medical Reports/Medico-legal Reports
Head Note (Summary of Summary)	Appeal to the Court of Appeal on a point of law which <i>'highlights the very difficult task faced by Immigration Judges when they are called upon to make findings of fact, in circumstances where there is no direct factual evidence other than that given by the appellant himself, and a lack of background information or of general experience upon which the Judges can safely rely'</i> .
Case Summary (150-500)	<p>The appellant is a member of the Temne tribe and a citizen of Sierra Leone, aged 22 years. On 10 May 2002, he left that country and arrived in the United Kingdom, where he claimed asylum five or six days later.</p> <p>HK was born and brought up in Kambia in Sierra Leone. His father was "a political man" who worked in or with the government for five or six years from 1977. In 1995, rebels attacked Kambia, and invaded the family home. HK's mother was killed, one of his sisters was raped, and his father and another of his sisters disappeared. HK himself was injected with drugs, ill treated in other ways, and forced to join the rebels with another sister.</p> <p>After three or four years, HK and his sister were released and returned home. In late 1998 or early 1999, HK joined a football team in Freetown. When rebels entered Freetown on 6 January 1999, he escaped and returned to his village where he remained until it was attacked again, and he spent the next two or so years as a refugee with Guinean soldiers. He returned to his village at the beginning of 2002. In February 2002, he went to Bo district in the south of the country.</p> <p>While in Bo district, he was attacked by a group of young men of the Mende tribe. He said that they targeted him because of his father, whom they described as a "greedy man", "stupid" and "foolish".</p> <p>HK said these members of the Mende tribe took him into the bush where</p>



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	<p>they walked for two days. One of the men then cut him three times on the left side of his chest, and threatened to cut his throat. The men then dug a hole "and forced me to put my penis into the hole. There were poisonous ants crawling all over the place and I sustained many bites". He said that the men then sang a song saying that he was going to join their society, known as the Wunde, which he believed was a group which terrorised others.</p> <p>He was helped to escape. Back at his village, he hid the scars on his chest because, he said, if they were discovered, his life would be "in extreme danger".</p>
<p><i>Facts</i></p>	<p>The Appellant's appeal against refusal of asylum was heard and dismissed two times. The Tribunal did not believe that part of his evidence concerning his experiences in Sierra Leone as it was implausible and, in any case, they concluded that, even if that evidence was correct, HK could live in Kambia, his home town, in such a way as could reasonably be expected to ensure that he was not in any danger in any event.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Tribunal had given very little weight to the expert country and medical evidence relied on by the appellant, and there was not much in available country material to support the account. The Court of Appeal had concerns about the Tribunal's reasons for rejecting the account.</p> <p><i>28. ...in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).</i></p> <p><i>29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in Hathaway on Law of Refugee Status (1991) at page 81:</i></p> <p><i>"In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."</i></p> <p><i>49. In addition, this is a very exceptional case, not merely in the unusual nature of the appellant's story, but also in the consistency of his evidence, the absence of any contradictory evidence, and the support from country and medical expert evidence. I would not go so far as to suggest that, on the evidence currently available, the Tribunal could not have rejected HK's story, but, taken as a whole, the reasons for which the story was rejected simply cannot stand. Accordingly, subject to the second issue, to which I now turn, I would allow this appeal.</i></p>



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	<p><i>72. On analysis of the tribunal's reasoning, I am unable to avoid the conclusion that the applicant's account has been rejected simply because the facts that he describes are so unusual as to be thought unbelievable. But, as Lord Justice Neuberger has pointed out, that is not a safe basis upon which to reject the existence of facts which are said to have occurred within an environment and culture which is so wholly outside the experience of the decision maker as that in the present case. There is simply no yardstick against which the decision maker can test whether the facts are inherently incredible or not. The tribunal's failure to confront that problem must lead to the conclusion that they erred in law.</i></p>
<i>Outcome</i>	<p>The appeal was remitted by the Court of Appeal to be reheard by the Tribunal.</p>