



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee

co-financed by the European Commission

Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	Hysi 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	[2005] EWCA Civ 711
Other Citation Number	
Date Decision Delivered	15 June 2005
Country of Applicant/Claimant	Kosovo
Keywords	Internal relocation
Head Note (Summary of Summary)	It would be neither realistic nor reasonable to expect a young man to avoid persecution in a place of relocation by trying to hide his ethnicity and background from those around him.
Case Summary (150-500)	The appellant, who is 18 years old, is a citizen of Kosovo, of mixed ethnicity, the only child born to an Albanian father and a Roma-gypsy mother. The family lived in Southern Mitrovica. During the ethnic conflicts in Kosovo between 1999 and 2001, as the result of a perception that persons of Roma or mixed race were Serbian spies and collaborators, his parents were both attacked. In early 2002, the appellant's father left the family home. That was the last the appellant saw of him. With the active support of his mother, who was unable to raise the funds for them both to flee from Kosovo, he left his home and eventually entered the United Kingdom on 2 September 2002. He sought asylum two days later. He was then 15 ½ years old. Since then he has not seen or heard of or from his mother. His application for asylum was refused by the Secretary of State.
<i>Facts</i>	The adjudicator who heard his appeal accepted his account, and found that he had been persecuted on account of his ethnicity. His appeal was dismissed on the basis that he could not return safely to his home area, but could relocate. The Immigration Appeal Tribunal upheld that decision. That decision was challenged in the Court of Appeal
<i>Decision & Reasoning</i>	<p>The Court of Appeal disagreed with the Tribunal's approach to internal relocation.</p> <p>As far as the appellant's safety was concerned, the Court found that it may not be realistic to expect a young man to be able to keep his ethnicity and background a secret from those around him.</p> <p>In regard to reasonableness, the court looked at a number of authorities concerning cases involving sexuality and the exercise of discretion in order to avoid persecution. It was not enough for the Tribunal to say that the</p>



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
co-financed by the European Commission*

	<p>appellant would be able to hide his ethnicity. They needed to consider also the implications for him of having to do so, and the continual fear of discovery.</p> <p><i>33. We have already briefly touched on the fact that the appellant would have to explain himself and his arrival in the new location. Out of loyalty to the decision of the IAT, we have assumed that his ethnicity would not inevitably emerge. If however the truth is to remain concealed, this would probably involve the appellant leading a hermit-like existence, indeed without any social intercourse based on trust. As a stranger he is bound to be asked questions. He would presumably have to lie. Even if he could provide some colourable, but untruthful, explanation for his arrival in the new location, implying that he had never left Kosovo at all, he would have to live with that lie. He might well be called on to explain his linguistic ability with English. Moreover, he would thereafter have to avoid letting slip any intimation of his true ethnicity, or his constant lies. He would simply have to continue to lie and conceal his origins, while simultaneously living with the risk that the truth would be suspected or discovered, the fear of the consequent unpleasantness, and the fear based on the harsh realities of what he had seen his parents endure.</i></p> <p><i>37. ...The true extent of the consequent problems, and his ability to respond to them were not examined, whether they would arise from the fact that he would have to be a party to the long-term deliberate concealment of the truth about his ethnicity, but also from the understandable, continuing fear that the truth would be discovered...</i></p>
<i>Outcome</i>	The appeal was allowed and remitted to the Tribunal.