Neutral Citation Number: [2014] EWCA Civ 1481

Case No. C4/2014/2424

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
ADMINISTRATIVE COURT LIST
(HIS HONOUR JUDGE THORNTON)

Royal Courts of Justice
Strand
London, WC2A 2LL

Date: Monday, 3rd November 2014

B E F O R E:

SIR STANLEY BURNTON

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HK (SUDAN)

Appellant/Claimant

-v-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Defendant

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Mr Hugh Southey QC and **Mr Declan O'Callaghan** (instructed by Duncan Lewis) appeared on behalf of the **Appellant**
Mr Zane Malik (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**

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J U D G M E N T

SIR STANLEY BURNTON:

1. This is a renewed application for permission to appeal against a judgment of Judge Thornton, who refused to grant permission for an application for judicial review of a decision of the Secretary of State, who decided effectively that the applicant should be removed to Hungary and that his claim that removal to Hungary would breach his rights under Article 3 of the Convention was manifestly unfounded.

2. There is before the court a considerable body of evidence from a number of sources as to conditions in Hungary, which are undoubtedly troubling. They were considered by the Secretary of State in her original decision. Subsequent materials have been considered by the Secretary of State in a letter of 31st October 2014 and she maintains the position that effectively there is nothing in the complaints of the applicant.

3. In the end there are four aspects of the possible treatment in Hungary which give rise to the alleged concern on the part of the applicant. They are: (i) the fear of violence on the part of detaining officers; (ii) the use of leashes and handcuffs when detainees are transferred, which is rightly said to be degrading treatment; (iii) the unavailability of toilets within the rooms or cells in which detainees are kept, which means that they can only get to a toilet if allowed out by an officer, which may not happen for long periods particularly at night, as a result of which the detainee has to urinate into a bottle, that is said to be degrading; and (iv) the relative unavailability of psychiatric care, it being said that the applicant suffers from PTSD and would need such care, particularly if being removed against his will to a country in which he says he has suffered in the past and in which he fears that he will suffer again.

4. As far as the psychiatric care is concerned, the Secretary of State justifiably points to the fact that at an early stage in the application of this applicant the solicitors were asked whether he complained of torture and were told that he did not. It can be said, and is said on his behalf, that the contradiction between that and the information he gave to the psychologist who interviewed him for a relatively short period can be due to the fact that people suffering from PTSD are reluctant to mention their suffering, but the question was specific and the answer specific, and the Secretary of State in my judgment was entitled to rely on that history.

5. It seems to me that if the question of toilets stood alone, it is certainly degrading, but certainly that question, in my judgment, would not of itself pass the Article 3 threshold.

6. The use of leashes and handcuffs is undoubtedly degrading, but only occurs on transfers, and again it seems to me there is no sufficient risk of Article 3 misbehaviour as far as that is concerned.

7. The item that concerns me most is the allegation of violence against detainees. There is indubitably evidence that there can be violence by individual officers against detainees. Against that, there is also evidence that most of those who detain them act humanely. What has concerned me most is the statement of Hungarian Helsinki Committee, which has been obtained recently, which asserts that treatment of asylum

seekers in detention centres is appallingly and physical violence common. That goes close to crossing the line, but the fact that there has been violence in the past has been considered in the past, and must have been before the European Court in the case of Mohammed and Mohammadi, without a finding that there were Article 3 risks. However, it is one of those cases where it was assumed that conditions were improve, and there is some evidence that there has been some improvement but not sufficient.

8. Looking at this latest material, the difficulty with it is that it goes beyond anything there was before and is in a very general, vague statement which could be justified by material which has been in the public domain for some time and has been previously considered. If it were other than generalised and vague, I would undoubtedly have given leave, but it seems to me that that one statement is not enough to come to the conclusion that the Secretary of State was not entitled to certify. In those circumstances, I do not grant leave.