



Hungarian Helsinki Committee

KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary Template

Country of Decision/Jurisdiction	Ireland
Case Name/Title	M.A.M.A. and The Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Attorney General and Ireland and The Human Rights Commission
Court Name <i>(Both in English and in the original language)</i>	The High Court
Neutral Citation Number	(2011) 1EHC 147
Other Citation Number	High Court record Number 2008 648 JR
Date Decision Delivered	08/04/2011
Country of Applicant/Claimant	Sudan
Keywords	Credibility; prospective risk of persecution; no past persecution found
Head Note (Summary of Summary)	Sudanese asylum seeker, claim rejected at first instance and on appeal on grounds of credibility. An application for <i>certiorari</i> (an Order to set aside a decision) was made to the High Court on the grounds that " <i>having found that the applicant's account of past persecution was not credible the Tribunal member erred in law in failing to assess any future risk to the applicant if returned to Sudan</i> ".
Case Summary (150-500)	<p>The applicant claimed to be Sudanese and to have suffered persecution in Sudan, on grounds of being Muslim and a member of the Berti tribe, at the hands of the Janjaweed militia in Darfur and attacks by the Sudanese army.</p> <p>His asylum claim was rejected at first instance, on the grounds of being wholly incredible.</p> <p>The applicant appealed to the first respondent, the Tribunal, who also found that his claim was wholly incredible, and did not consider the question of future persecution.</p> <p>The applicant sought an order of <i>certiorari</i> (an order to set a decision aside) in the High Court on the grounds that the Tribunal had erred in law by not considering the possibility of future persecution. The respondent argued that despite a finding of a lack of credibility, which he disputed, there was an obligation to consider future persecution.</p>
<i>Facts</i>	<p>The applicant stated he was Sudanese, a member of the Berti tribe. He stated his village was attacked by the Janjaweed, his house destroyed and his brothers killed, however he and his parents survived.</p> <p>A year later, having moved to Gula, he was arrested by the Sudanese army, tied, blindfolded and imprisoned for weeks, during which time he was subjected to interrogation.</p>



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	<p>He was subsequently transported in a truck to be executed, however the truck broke down and he escaped, then met a man who removed his handcuffs and helped him escape to safety. He then made his way to Ireland.</p> <p>At first instance his credibility was wholly denied on the basis <i>inter alia</i> that he had no identity documents, it was not considered credible that his parents would have survived the attack on the house while his brothers did not, he was evasive and vague in relation to his travel to Ireland, details of his escape also lacked credibility.</p> <p>At the Tribunal stage, some of these issues were put to him and his oral evidence failed to convince. The Tribunal concluded, "the applicant's account of his imprisonment and the conditions surrounding the same is seriously suspect". Refugee status was refused. The applicant made an application to the High Court for a judicial review of that decision.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court found that the decision complained of should be set aside, but in part only.</p> <p>The applicant based his challenge on the argument that despite the finding of a lack of credibility, there was an obligation on the Tribunal to further assess whether there was a risk of future persecution if he were returned to Sudan; further, there was no finding he was not of the Berti tribe, or that he was not from Darfur or Sudan; further, given that the Tribunal acknowledged that "the situation in Sudan is indeed dire" and that "government forces had been complicit with Janjaweed militia in carrying out a war on native Africans", it was incumbent on the Tribunal to consider future risk of persecution.</p> <p>The Applicant sought to rely on the UK decision of <i>Karanakaran v SSHD (2003)3 AER 449</i>. The Court noted that <i>Karanakaran</i> had been considered on a number of occasions by the High Court in Ireland, and particularly in <i>Da Silveira v RAT (2004)1EHC 436</i>. The Court stated "In addressing the question as to the standard by which evidence of past persecution and possible future persecution must be judged by the Tribunal, Peart J. said <i>"the task of the Tribunal is not simply to be satisfied that there is a well-founded fear of persecution arising from the past, but that also, owing to such well founded fear for a Convention reason (the applicant) is outside the country of nationality, and is unable or owing to such fear is unwilling to avail himself of the protection of that country. In other words, that if returned to that country he would be likely to suffer persecution in the future. It is therefore not sufficient for the adjudicator to be satisfied or not as the case may be about particular facts and details relating to past persecution. A lack of credibility on the part of the applicant in relation to some, but not all past events, cannot foreclose or obviate the necessity to consider whether, if returned, it is likely that the applicant would suffer Convention persecution"</i>.</p> <p>The Respondents argued that in the English case of <i>SSHD v AH (Sudan) & Ors (2007)UKHL 49</i>, the House of Lords held that it was reasonable to relocate Darfuris to a safe place in Sudan even if this involved placing them in harsh conditions.</p>



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	<p>In relation to reliance on that judgement in this jurisdiction the Court opined that given the commonality of the application of the Geneva Convention, and particular the commonality of asylum procedures and determinations in the Common European Asylum System, it appropriate to rely on such decisions only in relation to "questions of interpretation of law" and that "reports of cases in other jurisdictions are not, in the view of this Court, an acceptable source of information as to the factual conditions in a country of origin".</p> <p>The Court accepted Da Silveira as the correct approach and held a finding of a lack of credibility in relation to past persecution as it "<i>would not necessarily relieve the administrative decision maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation</i>".</p> <p>The Court further held that the obligation to consider future risk must "<i>have a basis in some elements of the applicants story which can be accepted as possibly being true</i>", that the onus is on the applicant to establish the fundamental aspects of a claim, further, the country of nationality has to be established to satisfy the definition of refugee under the Convention. The Court noted that the applicant had submitted evidence of being accepted as Sudanese by the Sudanese community in Ireland, and had displayed a significant knowledge of the geography of North Darfur, and that the Tribunal decision "<i>implies that (the decision maker) was at least alive to the possibility that the applicant was Sudanese and might be from Darfur.</i>"</p> <p>The Court, therefore, held that the Tribunal decision should be quashed but only to the extent that it failed to consider future persecution, and sent the matter back to the Tribunal for further consideration by way of a supplementary decision.</p>
<i>Outcome</i>	<p>The Court held that the decision complained of should be set aside but only to the extent that the future risk of persecution was to be considered by way of supplementary decision, findings of negative credibility were not set aside.</p>