

THE HIGH COURT

2010 87 MCA

IN THE MATTER OF S. 21(5) OF THE REFUGEE ACT 1996 (AS AMENDED)

BETWEEN

ARTUR ABRAMOV

APPELLANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cooke delivered the 17th day of December 2010

1. This is an appeal taken under s. 21(5) of the Refugee Act 1996, (as amended) in which the Court is asked to direct the respondent to withdraw a decision made under ss. (1) of that section on the 4th March, 2010, to revoke a declaration of refugee status that had been made in favour of the appellant on the 27th November, 2002.

2. The background to the appeal can be stated very briefly. The appellant is a native of Dagistan in Russia, who arrived in the State in 2002 and claimed asylum. He claimed a fear of persecution if returned to Russia on grounds of his religious or ethnic origin. He is Jewish. By letter of the 12th November, 2002, the Office of the Refugee Applications Commissioner indicated that his application had been successful and that he would be granted refugee status in accordance with s. 17(1) of the Refugee Act 1996.

3. The respondent later became aware that the appellant had been the subject of a series of criminal convictions in the State and made inquiries with the Garda Síochána. These inquiries resulted in a report indicating that the appellant had been convicted of a series of offences between August 2007 and July 2008, which included a sentence of imprisonment for six months in Castlereagh for theft. As a result, by letter of the 5th January, 2009, the respondent proposed to revoke the appellant's refugee status upon the following grounds:-

"Your persistent involvement in criminal activities during your time in the State resulting in numerous criminal convictions for which you have been sentenced to terms of imprisonment and other sanctions. On the basis of this, it appears that you are a person whose presence in the State poses a threat to national security or public policy and thereby rendering yourself liable to revocation of your refugee status."

4. The appellant was invited to make representations to the respondent against that proposal. A further report from An Garda Síochána in March 2009 indicated that further convictions had been recorded against the appellant at Tralee District

Court on the 6th October, 2008. The appellant did not file any representations in accordance with s. 21(3)(b) of the Act of 1996, against the proposal to revoke refugee status. As a result, the Minister decided on the 2nd April, 2009, to revoke the refugee declaration. This revocation was challenged on the ground that the appellant had not received the proposal in question because he was incarcerated in Mountjoy Prison and not in Castlereagh Prison (where the letter had been sent,) and the proceedings in that regard were compromised on the 2nd November, 2009, and the revocation was withdrawn.

5. On the 26th November, 2009, the respondent again indicated his proposal to revoke refugee status pursuant to s. 21(1)(g) of the Act of 1996 in the following terms:-

"Your persistent involvement in criminal activities during your time in the State resulting in numerous criminal convictions for which you have been sentenced to terms of imprisonment and other sanctions. On the basis of this, it appears that you are a person whose presence in the State poses a threat to national security or public policy and thereby rendering yourself liable to revocation of your refugee status."

6. In response, submissions were filed on behalf of the appellant on the 4th December, 2009.

7. In the support of the contested decision to revoke the declaration of refugee status, the respondent furnished a detailed memorandum headed "Possible Revocation of Refugee Status" dated the 27th January, 2010 and compiled by the Ministerial Decisions Unit. This outlined the detailed history of the appellant's position in the State, the previous revocation and the acceptance of the need to re-examine it. In this memorandum the reason given for the consideration of revocation was expressed as follows:-

"Artur Abramov would appear to be a habitual criminal. It would appear that he is progressing into more serious crime. He served three previous prison sentences ranging from two months to eight months for theft having received stolen property."

8. These convictions were then examined in more explicit detail. The representations made on his behalf are then considered. The representations include the assertion that his problems are due to an addiction to heroin. This is considered. The view is then expressed:-

"It would appear that Mr. Abramov has involved himself in an increasingly serious level of crime since he arrived in the State. . . . No medical evidence has been provided to confirm that Mr. Abramov had a drug habit at the time he committed the offences . . . it is noted that Mr. Abramov's claimed drug free period has been almost entirely while he has been in custody in a controlled setting where all his associates are drug free and that 'therefore there is no guarantee that he will remain drug free upon his release'."

9. The memorandum then recommends that his declaration of refugee status be revoked on the basis, in particular, of s. 21(g) namely that he is "a person whose presence in the State poses a threat to national security or public policy ("*ordre public*"). That is the basis upon which the contested decision to revoke was then made by the Minister.

10. The principal ground raised by way of appeal against the decision to revoke the declaration is essentially a legal ground. No query is raised as to the accuracy of the assessment of facts upon which the decision was based. Since the grant of

refugee status the applicant has indeed been convicted of a long series of criminal offences including theft, handling stolen property, offences in relation to road tax and insurance under the Road Traffic Acts and many others. Numerous terms of sentence to imprisonment have been imposed.

11. In essence, the primary ground of challenge to the decision of the respondent in this case is directed at the reliance upon s. 21(1)(g) of the Refugee Act 1996 as a basis for revoking refugee status by reference to the above series of criminal convictions on the basis that he is "a person whose presence in the State poses a threat to national security or public policy (*"ordre public"*)".

12. It is pointed out that under Regulation 11(1) of the European Communities (Eligibility for Protection) Regulations 2006 ("the 2006 Regulations"). The Minister is given power to refuse to grant or to renew or revoke a declaration that a person is a refugee where:-

"(a) There are reasonable grounds for regarding him or her as a danger to the security of the State, or

(b) He or she having been convicted by final judgment of a particularly serious crime, constitutes a danger to the community of the State."

13. This, it is submitted, presumably reflects and implements Article 14.4 of the "Qualifications Directive" (Council Directive 2004/83/EC) which provides that Member States may revoke, end or refuse to renew refugee status where:-

"(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State."

14. Accordingly, it is effectively submitted that these provisions of the Regulations and the Directive have supplanted s. 21(1)(g) of the 1996 Act and that it is no longer competent for the Minister to rely on para. (g) and the concepts of national security or public policy when, in the context of the present case, what is relevant is the fact of conviction "by a final judgment of a particularly serious crime" such that the refugee "constitutes a danger to the community of the State". It is argued that this appellant has not been convicted "by a final judgment" of anything which could be said to be "a particularly serious crime" or that he thereby "constitutes a danger to the community of the State".

15. It must first be pointed out that s. 21(1)(g) of the Act of 1996, remains in force; it has not been repealed, notwithstanding the implementation of the 2006 Regulations and the transposition of the Qualifications Directive. Secondly, the 1996 Act, explicitly gives effect to the Geneva Convention on the Status of Refugees of 1952, in national law and must therefore be construed in so far as possible so as to conform to the provisions of the Convention.

16. It is also to be noted, however, that the Geneva Convention distinguishes between the concepts of "cessation" of refugee status which occurs when international protection for the refugee is no longer necessary or justified; and, on the other hand, the expulsion of a refugee from a Contracting State. In accordance with Article 1C of the Convention, international protection may no

longer be necessary or justified so that a person may cease to be a refugee for the series of reasons set out in paragraphs (1) to (6) such as, for example, that he or she has voluntarily re-availed of the protection of the country of origin or nationality. The listed events or causes are all matters that arise after the person has come within the definition of "refugee" and which render the continuance of international protection unnecessary.

17. Article 32 of the Convention, on the other hand, deals with the expulsion of a refugee from the Contracting State of refuge on the ground of national security or "*ordre public*". Indeed, Article 33(2) provides for an exception to the prohibition on refoulement where a refugee poses a threat to national security or has been convicted of a "particularly serious crime". Thus a refugee who still comes within the definition of that term may be expelled and even returned to the country of nationality in which persecution remains to be feared when that exception applies.

18. When acceding to the Geneva Convention, Ireland made an interpretive declaration to the effect that it understood the words "public order" in Article 32(1) to mean "public policy". Thus, Ireland was declaring its entitlement to expel a refugee from its territory for a reason of "public policy". The provisions of the Geneva Convention are given effect in domestic law by the Refugee Act 1996. Thus, s. 21(1) of the Act reflects the content of Article 1C of the Convention but para. (g) appears to go beyond the content of Article 1C by the incorporation of the reference to "national security/*ordre public*" from Article 32 of the Convention. Thus, while the Convention uses "*ordre public*" as the ground for expulsion in Article 32, the 1996 Act employs it as a ground for revocation of status in section 21. These, however, are two different procedures. A refugee may have his or her status revoked without necessarily being expelled from the territory of the Contracting State in question. Alternatively, a refugee may be expelled from that territory while remaining a refugee, that status not having been lost or revoked.

19. There is, in the judgment of the Court, a flaw in the manner in which the 1996 Act has given effect to the Geneva Convention in this regard. Under the Geneva Convention the concept of "*ordre public*" (which Ireland declares to be equivalent to "public policy") is a ground for expulsion of a refugee in Article 32, whereas the Act of 1996 treats it as a ground for revocation of refugee status in section 21(1)(g). The crucial issue which therefore arises in this case is whether it is competent or correct for the respondent to revoke a declaration of refugee status on the basis of the unrepealed provision of para. (g) of s. 21(1) while not necessarily expelling the person concerned from the State on grounds of "public policy" based upon the acquisition of a series of criminal convictions, without the necessity of considering in accordance with the Regulation 11(1) of the 2006 Regulations whether that series of convictions involves "a particularly serious crime and a danger to the community of the State".

20. It is important to bear in mind a basic principle of refugee law. An individual does not become a refugee by making a successful application for protection under s. 8 of the Refugee Act 1996. A person is a refugee once his or her condition or circumstances come within the definition of "refugee" in Article 1A(2) of the Geneva Convention. The measure adopted by the Minister under s. 17 (1) (a) of the Act of 1996 is purely declaratory of that existing status. This is why Article 1C of the Convention speaks of the Convention "ceasing to apply" to any person falling under the terms of Section A when any one of the events listed in sub-paragraphs (1) - (6) occurs.

21. Expulsion under Article 32 is expulsion of a person who is still "a refugee": *"The expulsion of such a refugee shall only be in pursuance of a decision ...etc"*. Revocation of a declaration of refugee status is therefore appropriate and necessary where the circumstance which brought the individual within the terms of the definition in the Convention has ceased to exist. However, the declaration is cancelled, not for the purpose of imposing a sanction on the refugee but because the declaration no longer reflects the reality of the individual's status and condition. So long as the individual is outside the country or his or her nationality owing to a fear of persecution for the one of the Convention reasons, the status of refugee continues and this so even when the refugee commits a crime or a series of crimes.

22. Accordingly, revocation of the status of refugee is only appropriate and compatible with the terms of the Geneva Convention where one of the events provided for that purpose in Article 1C has occurred. If a Contracting State considers that in the absence of any such change of circumstance, the presence of the refugee in its territory has become intolerable because of the conduct of the refugee, the appropriate course of action lies under Article 32, namely, expulsion. Where the effect of the decision to expel is to return the refugee to the country of nationality, expulsion is only permissible in accordance with Article 33(2) of the Convention namely upon the ground that the refugee has been convicted by a final judgment of a particularly serious crime and thus constitutes a danger to the community of the country of refuge.

23. As indicated, the present application is made by way appeal under s. 21 (5) of the Act of 1996. Having considered the appeal the Court is entitled "as it thinks proper" either to confirm the Minister's decision or direct him to withdraw the revocation. This is a general statutory appeal and not a judicial review of the lawfulness of the process by which the revocation decision was reached. In the judgment of the Court the Minister should be directed to withdraw the declaration in this case because the appellant has not ceased to be a refugee. Unless and until one of the events or circumstances listed in Article 1C occurs, his status as a refugee remains unchanged.

24. Secondly, the clear purpose of the revocation here is to reflect the fact that the many convictions accumulated by the appellant render his conduct and presence intolerable. As already pointed out (see paragraph 9 above,) the basis for the contested decision was explicitly that the appellant was a person whose presence in the State posed a threat to national security or public policy. That however is a possible reason for expelling a refugee not for considering that his need and entitlement to international protection has ceased and ought to be revoked as it no longer reflects his coming within the definition of "refugee". If the Minister considers that his criminal record renders his presence within the State no longer tolerable on grounds of public policy, then the appropriate course is expulsion and that can only be done by means of a decision to the effect that the refugee has been convicted of a particularly serious crime, such that he constitutes the danger to the community. That is not the matter which the Minister has considered in this case.

25. The order of the Court will accordingly be to allow the appeal and direct the Minister to withdraw the revocation.