



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>United Kingdom</b>
Case Name/Title	Svazas v Secretary of State for the Home Department
Court Name	Court of Appeal
Neutral Citation Number	[2002] EWCA Civ 74
Other Citation Number	[2002] 1 WLR 1891
Date Decision Delivered	31 January 2002
Country of Applicant/Claimant	Lithuania
Keywords	Actor of Protection, Actor of Persecution, Non-state actor of persecution, Persecution, State protection
Head Note (Summary of Summary)	Where the actors of persecution feared are themselves state agents consideration must still be given to whether the applicant can avail himself of protection, but this assessment must be made in context. There will be a spectrum of cases between, on the one extreme, those where the only ill-treatment is by non-state actors and, on the other extreme, those where the state itself is wholly complicit in the ill-treatment.
Case Summary (150-500)	
<i>Facts</i>	The applicant was a Lithuanian who came to the UK and claimed asylum in 1998. He was 30 years old and a member of the, then illegal, Communist Party. He had been arrested in 1993, 1995, and 1998 because of his political views. He was held for between 10 and 14 days on each occasion and was ill-treated in detention. After the last arrest he was charged with being involved in illegal activities. He fled to the UK and claimed asylum on arrival. Lithuania was held to be, at that time, a nascent democracy in which the constitutional guarantees of proper treatment of citizens by the police were, despite the will and efforts of the government, systematically or at least endemically violated.
<i>Decision &amp; Reasoning</i>	The appeal was allowed and remitted to the Tribunal for further consideration.  The Court of Appeal held that the Tribunal's conclusions were inconsistent in that, on the one hand, it accepted that individual policemen might subject the applicant to brutality in custody because of his communist sympathies and, on the other held, that he would be in no worse a position than other prisoners. Further, the Tribunal had failed to take into account the particular importance that the actors of persecution, in this case, were state officials.  The Court justified the second finding by reasoning that, where the actors of persecution feared are themselves state agents, consideration must still be given to whether the applicant can avail himself of protection, but this assessment must be made in context.



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	<p>Thus, where the state actively instigates or condones the ill-treatment then clearly the applicant is not being protected. However, where the actor of persecution is a state agent, such as a corrupt or a rogue police officer, the principles in the House of Lords decision in Horvath (see separate summary) should be applied taking into account the relevant context. This could include many factors, including whether the state in question is a democracy. Lord Justice Simon-Brown summarised the correct approach as follows:</p> <p>“In short, there will be a spectrum of cases between, on the one extreme, those where the only ill-treatment is by non-state agents and, on the other extreme, those where the state itself is wholly complicit in the ill-treatment. Within that spectrum, the question to be addressed is whether or not the state can properly be said to be sufficient providing a way of protection. When, however, one comes to address the question in this context rather than in the context of ill-treatment exclusively by non-state agents, one must clearly recognise that the more senior the officers of state concerned, and the more closely involved they are in the refugee’s ill-treatment, the more necessary it will be to demonstrate clearly the home state’s political will to stamp it out and the adequacy of their systems for doing so and for punishing those responsible, and the easier it will be for the asylum seeker to cast doubt upon their readiness, or at least their ability, to do so”.</p> <p>In addition, the Court also emphasised that the seriousness of the ill-treatment should also be considered; “[t]he more serious the ill-treatment, both in terms of duration, repetition and brutality, the more incumbent it is upon the state to demonstrate that it can provide adequate protection”.</p>
<i>Outcome</i>	Appeal allowed and remitted to the Tribunal for further consideration
Subsequent Proceedings	
<b>EU Legal Provisions Applicable</b>	
Qualification Directive	Yes
Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	
<b>Legal Provisions Cited</b>	
1951 Refugee Convention	Yes
Qualification Directive	



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Asylum Procedures Directive	
Reception Conditions Directive	
Dublin II Regulation	
Returns Directive	
ECHR European Convention on Human Rights	Article 5
CFREU Charter of Fundamental Rights of the European Union	
TFEU Treaty on the Functioning of the European Union	
ICCPR	
CRC	
CAT	
ICESCR	
CEDAW	
ICERD	
UNHCR Handbook	
Geneva Conventions & Additional Protocols	
European Social Charter	
ICC Statute	
<b>Case Law Cited</b>	
CJEU Cases Cited	
ECtHR Cases Cited	<i>Brogan v UK</i> (1988) 11 EHRR 117
Other Cases Cited	Islam v. Secretary of State for the Home Department Immigration Appeal Tribunal and Another, Ex Parte Shah, R v. [1999] UKHL 20, Secretary of State for the Home Department, Ex parte Adan, R v. [1998] UKHL 15 <i>Horvath v Secretary of State for the Home Department</i> [2000] UKHL 37 ( <i>House of Lords</i> ) [1999] EWCA Civ 3026 ( <i>Court of Appeal</i> ) [2000] INLR 15 ( <i>Immigration Appeal Tribunal</i> )

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	Sepe & Anor v Secretary Of State For Home Department [2001] EWCA Civ 681, [2000] EWCA Civ 11, <i>Wierzbicki v Home Secretary</i> [2001] Imm.A.R.60 <i>B v Secretary of State for the Home Department</i> (C/2001/1278)
Other sources cited	Professor James Hathaway, <i>The Law of Refugee Status</i> (1991), pages 125-6
Observations/Comments	This decision has been applied in the Court of Appeal's guidance in <i>Bagdanavicius</i> (see separate summary). In <i>AW (Pakistan)</i> (see separate summary) this guidance was applied to Articles 6 and 7 of the Qualification Directive