



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	Secretary of State for the Home Department v. AH (Sudan) & Ors
Court Name <i>(Both in English and in the original language)</i>	House of Lords
Neutral Citation Number	[2007] UKHL 49
Other Citation Number	
Date Decision Delivered	14/11/07
Country of Applicant/Claimant	Sudan
Keywords	Internal Protection
Head Note (Summary of Summary)	The House of Lords test in Januzi (see separate summary) for assessing internal protection was approved. In assessing whether the proposed area of internal relocation was unreasonable or unduly harsh it was an error of law to require that the circumstances would result in a breach of Article 3 of the European Convention on Human Rights or that the circumstances will be worse than the circumstances experienced by anyone else in that country.
Case Summary (150-500)	The three applicants were the same three black Africans from Darfur in Sudan, whose appeals had been remitted by the House of Lords in the case of Januzi. It was accepted that each applicant had a well founded fear of persecution in Darfur.
<i>Facts</i>	In reconsidering the remitted appeals, the Tribunal had found that it would not be unduly harsh to expect the applicants to internally relocate to Khartoum (see HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062). The Court of Appeal overturned the Tribunal's decision (see [2007] EWCA Civ 297) finding that the Tribunal had had too little regard to the characteristics of the asylum-seeker, or to a comparison with conditions in his place of habitual residence and those in the safe haven. The Court of Appeal allowed the appeals.
<i>Decision & Reasoning</i>	The House of Lords approved the test for assessing internal protection set out in Januzi (see separate summary), namely that "[t]he decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so." It held that this test "was one of great generality, excluding from consideration very little other than the standard of rights protection which an applicant would enjoy in the country where refuge is sought". It considered that, reading the Tribunal's determination as a whole, the Court of Appeal had been wrong to find that the Tribunal had applied an incorrect test. In assessing whether internal relocation was unreasonable or unduly harsh



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	<p>under the Refugee Convention, it was not correct to require that an applicant show that there would be a breach of his rights under Article 3 ECHR in the area of proposed internal relocation. However, <i>"a claimant for asylum could not reasonably or without undue hardship be expected to return to a place where his rights under article 3 or its equivalent might be infringed"</i>.</p> <p>It further held that, in assessing whether a proposed area of internal relocation was reasonable or unduly harsh for an applicant it would be an error to require that the applicant's <i>"circumstances will be worse than the circumstances of anyone else in that country"</i>. That said, Lord Brown held that <i>"[i]f a significant minority [of persons in the home country] suffer equivalent hardship to that likely to be suffered by a claimant on relocation and if the claimant is as well able to bear it as most, it may well be appropriate to refuse him international protection.....For these respondents, persecution is no longer a risk. Given that they can now safely be returned home, only proof that their lives on return would be quite simply intolerable compared even to the problems and deprivations of so many of their fellow countrymen would entitle them to refugee status. Compassion alone cannot justify the grant of asylum"</i>.</p> <p>The House of Lords favoured the test suggested in the UNHCR Guidelines that <i>if under those conditions the asylum seeker cannot live a relatively normal life according to the standards of his country it will be unduly harsh to expect him to go to the safe haven</i>.</p>
<p><i>Outcome</i></p>	<p>The House of Lords allowed the Secretary of State's appeal against the Court of Appeal's decision. It dismissed the applicants' appeals against the refusal of asylum.</p> <p>It should be noted that in 2009, the Tribunal changed its country guidance in respect of internal protection and non-Arab Darfuris. It held in <i>AA (Non-Arab Darfuris – internal relocation)</i> [2009] UKAIT 00056 that <i>"[a]ll non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan"</i>.</p>