Upper Tribunal
(Immigration and Asylum Chamber)

AW (sufficiency of protection) Pakistan [2011] UKUT 31(IAC)

THE IMMIGRATION ACTS

Heard at Field House
On 11 November 2010

Determination Promulgated

Before

LORD BANNATYNE
SENIOR IMMIGRATION JUDGE STOREY

Between

AW

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr G P McGowan, Solicitor
For the respondent: Mr K Kyriacou, Home Office Presenting Officer

1. *At paragraph 55 of Auld LJ's summary in Bagdanavicius [2005] EWCA Civ.1605 it is made clear that the test set out in Horvath [2001] 1 AC 489 was intended to deal with the ability of a state to afford protection to the generality of its citizens.*

2. Notwithstanding systemic sufficiency of state protection, a claimant may still have a well founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably require (per Auld LJ at paragraph 55(vi)).

3. In considering whether an appellant's particular circumstances give rise to a need for additional protection, particular account must be taken of past persecution (if any) so as to ensure the question posed is whether there are good reasons to consider that such persecution (and past lack of sufficient protection) will not be repeated.

DETERMINATION AND REASONS

1. This is an appeal against the decision of the Immigration Judge dated 20 March 2009 refusing the appellant's appeal on asylum grounds, humanitarian protection grounds and on human rights grounds.

Background

2. The appellant is a national of Pakistan born on 5 November 1966. He claims to have left Pakistan on 16 November 2008 and to have flown to Paris. He left France on 16 December 2008 and entered the United Kingdom concealed in a lorry. He claimed asylum on 18 December 2008. For reasons contained in the Home Office letter dated 5 February 2009 his claim for asylum was refused and it was said he did not qualify for humanitarian protection. It was also concluded that the United Kingdom would not be in breach of our obligations under the European Convention of Human Rights (ECHR) if he was removed to Pakistan.

3. The appellant then appealed under s.82 (1) of the Nationality, Immigration and Asylum Act 2002 and that appeal was heard at Glasgow on 17 March 2009.

The basis of the appellant's claim

4. The basis of the appellant's claim was as set out in his statement. That statement was set out by the Immigration Judge in the following terms:

> "3. He is a Sunni Muslim who last lived in Miranshah which is North Waziristan in Pakistan. He was employed as a police officer. He was

married and they have one daughter who now lives with his mother since his wife was killed on 28 September 2008. His brother was killed by the MQM on 25 July 2008.

4. The reason he claims asylum is because of his fear of the MQM who have already killed his wife and brother because of his activities as a police officer against them.

5. He joined the police in October 1991 and worked in Karachi in Sindh Province.

6. His problems began on 12 May 2007 when a number of Pashtun speakers demonstrated about the sacking of the Chief Justice of the Supreme Court. The incident turned nasty and vehicles were burned and people were killed. His superiors ordered that he release the people who had been involved in the violence. They were MQM supporters and he was not prepared to release them.

7. During 2008 the Home Minister issued a circular order that all police stations in Karachi called criminal procedure 144 which prohibited processions and public meetings and graffiti. It also prohibited wall chalking or graffiti and he was responsible in his area for overseeing the issue of wall chalking. During this period his own house was wall chalked and in particular it was written that 'he who was a traitor to the leader deserves to be killed'.

8. He arrested some people for wall chalking who were writing on the wall of his house. He continually had to clean up the wall.

9. On one occasion his brother caught people wall chalking outside their home and tried to stop them. Within two days he was murdered. His brother lived in the same house as him. There were two suspects who were shooters for the MQM. They were taken to court and then released on bail. After they got bail he tried to have them detained again and he wrote various applications but the MQM leaders approached him in order to try and settle the matter. Rauf Siddique, the Minister in Charge for Work and Industry and Faruk Sattar, now Overseas Minister, sent their people to see whether or not a settlement could be arranged. He refused to accept a settlement. He believes these two men were also responsible for the shooting at his home and the killing of his wife when she was 8 months pregnant on 28 September 2008.

10. On that day he was up on the roof feeding birds and his wife was in the ground floor. Suddenly he could hear shouting and swearing and then shots. His neighbour said that there were four men and that one of these was [AD, the senior MQM official in charge of Mahmoudabad].

11. After his wife's death a report was filed against him on 21 October 2008 accusing him of kidnapping the two MQM suspects under section 365 of the Pakistan Penal Code.

12. He cannot go to another part of Pakistan to hide from the MQM because they have different groups and departments throughout Pakistan. They have a funding group, an intelligence group, an operations group, and they would not spare him. They killed four of his friends in Lahore at different times and they have reached throughout Kashmir. There is also the case against him which means that there is nowhere in Pakistan that is safe.

13. He cannot stay hidden forever and it is for that reason that he fled the country as soon as he received information from his friend and that the MQM had used its influence to start a case against him. If he was to be caught and imprisoned he would almost certainly be ill-treated in custody and probably killed. He understands that to date the MQM has killed over 200 police officers who have stood up against them in Karachi. They have a known history of attacking police officers' homes. They are a well known organisation, militant and political. In terms of the refusal letter the MQM were in full power from 1999 to 2007. He comments on various aspects in the refusal letter. He says that the MQM leader said he should settle for they could not guarantee his safety or be responsible for the consequences. The judges are also in the hands of the MQM who have killed many judges and lawyers. FIRs are circulated throughout the country and he could be arrested anywhere in the country. The FIR is not just limited to his own province. Any police authority would return him to Sindh. He has produced a number of documents to the Home Office".

The evidence

5. Before the Immigration Judge the appellant adopted his statement and no oral evidence was led. However, in support of his claim the appellant produced a number of documents. They included extracts from a Country of Origin Information Report (COIR) dated November 2008 which at paragraph 9.04 noted that the police were politicised. Further, at paragraph 9.05 it was noted that corruption within the police was rampant and that police charged fees to register genuine complaints and accepted money for registering false complaints. Paragraph 9.06 stated that there was a climate of impunity. In addition at paragraph 18.01 it noted that the law provided criminal penalties for official corruption but the Government did not implement the law effectively and officials frequently engaged in corrupt practices with impunity. Paragraph 18.02 observed that corruption charges were frequently used as a tool to punish opposition politicians or induce them to join the ruling PML-Q.

6. Other items of evidence adduced by the appellant before the Immigration Judge were documents from 7/1 onwards relating to the activities of the MQM. The Article 8/1 says that the MQM has been widely accused of human rights abuses since the founding of it two decades ago. They have been heavily involved in the widespread political violence that has racked Pakistani's southern Sindh Province, particularly Karachi. Amnesty International has accused the MQM-A and a rival faction of summary

killings, torture and other abuses. The MQM-A is one of two factions of the MQM and is led by the founder of the MQM Altaf Hussain. It is said in document 8/1 that the MQM has become the dominant political party in Karachi and Hyderabad, another major city in Sindh. Document 10/1 says that a US Think Tank lists the MQM as a militant outfit. Document 19/1 indicates that the MQM retained total political control of Karachi and monopolised the government of Sindh. Document 25/1 noted that the MQM decided to join the Federal Government and it was given four slots in the cabinet. A source in the government said that MQM was playing an important role in defusing the Pakistan/India tension following the Mumbai terrorist attacks. Government circles, the official said, were highly appreciative of the efforts being made by the MQM for the normalisation of Pakistan/India ties. The MQM leader said that they were playing a role in improvement of Pakistan/India ties and their party would continue playing a role in bringing a thaw to the Pakistan/India relationship.

7. Lastly, certain documents were lodged establishing the appellant's wife's death and the death of his brother.

8. The Immigration Judge accepted at paragraph 24 of his determination that there was little or no challenge to the appellant's credibility.

9. The Immigration Judge from paragraph 25 of his determination begins his detailed consideration of the case. He takes as his starting point that in general it has been held by the Tribunal that there is a sufficiency of protection in Pakistan as set out in AH (Sufficiency of Protection – Sunni Extremists) Pakistan CG [2002] UKIAT 05862 and as commented on in Hussain v SSHD [2005] CSIH 45.

10. The Immigration Judge goes on to state at paragraph 25 as follows:

> "The appellant is clearly very unhappy, understandably so, that those persons who are believed to have killed his brother were subsequently released on bail. However, as the Home Office points out in paragraph 28 of the refusal letter, the granting of bail to persons while further investigation is carried out does not demonstrate a failure of state protection. Many people, even in the United Kingdom, are released on bail pending very serious criminal charges. It does seem to me to be noteworthy in connection with an assessment of whether or not there remains a sufficiency of protection in Pakistan that the appellant did not report the murder of his wife to the authorities. It seems the appellant concluded that the police either could or would not assist him. However, the objective evidence before me does not suggest that the police would not investigate such a serious crime. While there is clearly considerable corruption in the police I was not referred to any passage which even hints at the suggestion that the police would do nothing to try and investigate who committed such a crime; the only reasonable inference to draw from the objective evidence is that they would do

everything they could to bring the perpetrators to justice. The concept of a sufficiency of protection does not require that there should be a guarantee of safety to an individual in the state. No state can hope to provide that. It requires essentially simply that there be an effective criminal system, offered within the state which will usually result in the criminal process being taken against those who break the law and in respect of which the state does not operate on a discriminatory basis against particular groups of which an appellant for asylum forms part. It seems to me that there is no discriminatory approach on the part of the state of Pakistan".

11. As regards the documents produced to which we have earlier referred the Immigration Judge accepts the authenticity of the documents relating to the death of the appellant's brother and wife. Other than that he merely notes at the end of paragraph 26 of his Determination as follows:

> "There is no objective evidence in front of me to suggest that because the MQM have Cabinet posts there is a causal link between that fact and the proposition that there is a reasonable degree of likelihood that the appellant will be seriously ill-treated if returned to Pakistan".

12. The Immigration Judge then at paragraph 28 of his determination holds that the appellant could relocate, noting that Pakistan is a large country with a number of principal cities with very large populations.

13. At paragraph 29, despite his findings at paragraph 28 in relation to internal relocation, the Immigration Judge turns to look at the issue of the appellant being wanted on criminal charges in Pakistan and accepts that on his arrival in Pakistan he would be arrested, returned to Sindh, be placed in custody and denied bail.

14. At paragraph 30 turning to the issue of denial of bail the Immigration Judge states:

> "The risk to the appellant appears to be one that faces people generally e.g. in this case of someone detained pending trial. It seems to me it cannot be said that such a person would face a real risk of serious harm unless in that country there is a consistent pattern of gross and systematic violations of their human rights while in detention – on the objective evidence before me it cannot be said that serious ill-treatment is generally or consistently happening which was the test set out in AA (Zimbabwe) [2007] EWCA Civ 149. Accordingly, however unsatisfactory the prison conditions and the difficulties that the appellant may face in custody this does not seem to me to take the appellant to the point where he has proved that it is reasonably likely that he would face Article 3 mistreatment in custody".

15. The Immigration Judge then concludes that it seemed to him that the appellant could safely be returned to Pakistan. Notwithstanding the volatility of that country and the killings which did occur from time to

time by non-state actors the objective evidence before him as he had above set out indicated that there was a sufficiency of protection for someone such as the appellant.

The grounds of appeal and submissions

16. Mr McGowan's submissions were broadly divided into four parts:

(1) He submitted that the Immigration Judge had failed to properly take into consideration the background evidence in the particular circumstances of the appellant's case in assessing whether the appellant should have stayed in Pakistan and reported the murder of his wife to the authorities. In this regard the Immigration Judge had failed to take into account the background information in various respects:

(i) the prevalence of corruption within the police (9.05 of November 2008 COIR),

(ii) the serious human rights abuses committed by members of the police force and the culture of impunity (9.06),

(iii) the routine engagement of the police in using excessive force, torture and bribery and the commission of extra-judicial killings especially for critics of the regime (9.07),

(iv) the slow progress in relation to investigating cases of abuse and redressing grievances leading to an atmosphere of impunity (9.07),

(v) the allegation that security personnel used abuse and torture of persons in custody throughout the country and the fact that the government rarely took action against those responsible and that torture is routine in Pakistan (9.13),

(vi) that there were 304 cases of torture in the Sindh province reported in the last 6 months (9.14),

(vii) that the security forces stages the deaths of a number of suspects (9.16),

(viii) that lengthy trial delays and failures to discipline and prosecute those responsible for abuses consistently contributed to a culture of impunity (9.16).

This resulted, he submitted, in the Immigration Judge not properly reasoning why he expected the appellant to seek protection from the state given the accepted corruption in the police and the fact that the appellant feared that he would have exposed himself to further danger by reporting the death of his wife, given that his brother and wife and had been murdered within a very short timescale of his refusal to act politically in relation to MQM supporters.

(2) In addition the Immigration Judge had also failed to take cognisance of the submissions made on behalf of the appellant as set out by him at paragraph 26 of his determination. What the appellant was submitting by reference to these documents was that there was substantial background information to show that the MQM although now part of mainstream politics, had its base in terrorist foundations and that they were not simply a provincial party with no influence outside the Sindh province. The submission was to the effect that given the politicised nature of the police force and the MQM's influence there was a real risk of the appellant being targeted in the manner feared.

(3) He also argued that at paragraph 27 the Immigration Judge had failed to come to any conclusions on whether or not the respondent's suggestion that a false claim against the appellant would be thoroughly investigated was correct or whether the appellant's submission was more likely to be correct. Whilst he accepted at paragraph 29 that there may be a real risk of the authorities wishing to arrest the appellant on the basis of the FIR against him, he then failed to properly assess the risk to the appellant in detention either pending trial or post-decision. It is unclear whether or not he accepted the submissions made that bail was likely to be denied at the request of the police for non-payment of bribes. It was submitted that the appellant was not just any other person awaiting trial and it was necessary for the Immigration Judge to provide explanations as to why he was not taking into account the particular circumstances of the appellant's case in considering the risk to him of ill-treatment in custody. In particular, the Immigration Judge had failed to take account of the facts: (a) that the appellant had made an enemy of the MQM by refusing to release suspects on the orders of his MQM superior; (b) his brother had been killed and the MQM suspects had been released on bail and were therefore at liberty; (c) his wife had been killed and again the suspicion was that this was by MQM henchmen; and (d) the prevalence of torture to extract confessions referred to in the COIR, paragraphs 9.13, 9.14 and 9.15. Lastly, he had failed to take account of the appellant's real fear of being killed in prison, pre or post-trial, as disclosed in his substantive interview in response to question 73 and as supported in the COIR at 9.16. It was submitted that the background information suggested that those who were critics of the regime were particularly at risk of torture, disappearance or denial of basic due process rights at the hands of the military authorities. He went on to submit that had the Immigration Judge considered the background information relating to the politicised nature of the police, the prevalence of corruption in these instances, the likelihood of ill-treatment for a person such as the appellant in custody and the use of torture to extract confessions and extra-judicial killings in a culture of impunity, he would not have

reached the conclusion that there was no real risk of Article 3 being engaged. This failure to properly consider the Article 3 risk of mistreatment in custody was crucial to his decision.

(4) At paragraph 31 the Immigration Judge failed to properly consider the real risk of the appellant's political opponents in the MQM using their henchmen to kill him in prison after sentence had been imposed, falsely or otherwise.

17. Lastly, he submitted that in relation to the issue of internal relocation the Immigration Judge appeared to accept at paragraph 29 of his Determination that on his return the appellant would immediately find himself in custody. If that was the position then there was no question of internal relocation.

18. Mr Kyriacou in his reply accepted that there was no question of internal relocation given the Immigration Judge's finding at paragraph 29.

19. However, with reference to KA & Others (Domestic Violence - Risk on Return) Pakistan CG [2010] UKUT 216 (IAC) Mr Kyriacou submitted that the Immigration Judge was entitled to find that there was a sufficiency of protection.

20. He relied in particular on a number of paragraphs in the said decision: paragraph 191 relating to the system of the use of FIR; paragraph 193 relating to the police which stated that the evidence fell well short of establishing that in general the police were fundamentally unwilling or unable to carry out law and order functions and ensure the protection of the public. It could not be said that there was a consistent pattern of police impunity for wrongdoing; in relation to the Judiciary he referred to paragraph 196 where it was said:

> "We do not understand any of the experts to assert, nor does the background evidence support the view that the Pakistan judiciary is fundamentally corrupt".

21. Lastly, he referred to paragraph 199 in relation to prison conditions where it was held that:

> "As noted earlier, there is a broad consensus in the major country reports that prison conditions in Pakistan are extremely poor and fail to meet international standards, the main problem being overcrowding, instances of ill-treatment by prison officials and inadequate food and medical care. That said, there are some signs of improvement in the more recent period and we note that no major international body has argued that conditions in Pakistan prisons generally fall below the high threshold of Article 3 ill-treatment as

enunciated by the ECHR in Ramirez Sanchez (or their UN International Civil and Political Covenant equivalent)".

Assessment of whether there is an error of law

22. The starting point in considering whether there is a sufficiency of protection must be regulation 4 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (implementing Article 7 of the Qualification Directive 2004/83/EC) which we take to mirror the principles set out by the House of Lords in Horvath v Secretary of State for the Home Department [2001] 1 AC 489 where it was held that whether protection was sufficient was a "practical standard which takes proper account of the duty which the state owes its nationals…" and that "the sufficiency of state protection is not measured by the existence of a real risk of an abusive right but by the availability of a system for the protection of a citizen and a reasonable willingness of the state to operate it".

23. However, in our view in the instant case the foregoing only provides a starting point. As noted by the Tribunal in IM (Sufficiency of Protection) Malawi [2007] UKAIT 00071, in Bagdanavicius the House of Lords at [2005] UKHL 38 left undisturbed the proposition set out by Auld LJ on real risk and sufficiency of protection in the Court of Appeal [2005] EWCA Civ 1605. These propositions are in the following terms:

> "54. Summary of conclusions on real risk/sufficiency of state protection.
>
> *The common threshold of risk*
>
> 55. 1) The threshold of risk is the same in both categories of claim; the main reason for introducing section 65 to the 1999 Act was not to provide an alternative, lower threshold of risk and/or a higher level of protection against such risk through the medium of human rights claims, but to widen the reach of protection regardless of the motive giving rise to the persecution.
>
> *Asylum claims*
>
> 2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason *and* that there would be insufficiency of state protection to meet it; Horvath [2001] 1 AC 489].
> 3) Fear of persecution is well-founded if there is a 'reasonable degree of likelihood' that it will materialise; R v SSHD ex p. Sivakumaran [1988] AC 956, per Lord Goff at 1000F-G.
> 4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness *and* ability on the part of

the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman v UK [1999] 1 FLR 193], Horvath, Dhima [2002] EWHC 80 (Admin), [2002] Immigration Judge AR 394].

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; Horvath; Banomova [2001] EWCA Civ.807. McPherson [2001] EWCA Civ 1955 and Kinuthia [2001] EWCA Civ 2100.

6) Notwithstanding systemic sufficiency of state protection in the receiving state a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.

Article 3 claims

7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in Soering; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; Dhima, Krepel [2002] EWCA Civ 1265 and Ullah [2004] UKHL 26.

8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk *there* of Article 3 ill-treatment.

9) In most, if not all, Article 3 cases in this context the concept of risk has the same or closely similar meaning to that in the Refugee Convention of a 'well-founded fear of persecution', save that it is confined to a risk of Article 3 forms of ill-treatment and is not restricted to conduct with any particular motivation or by reference to the conduct of the claimant; Dhima, Krepel, Chahal v UK [1996] 23 EHRR 413.

10) The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked and whether the risk emanates from a state agency or non-state actor; Horvath.

11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state-agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risk spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.

12) An assessment to the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the other whether or not the exercise is regarded as 'holistic' or to be conducted in two stages; Dhima, Krepel, Svazas [2002] EWCA Civ 74.

13) Sufficiency of state protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment'; Dhima, McPherson; Krepel.

14) Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.

15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.

16) The approach is the same whether the receiving country is or is not a party to the ECHR, but, in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under section 115(1) and/or (2) of the 2002 Act".

24. Thus, while it will always be relevant to ask whether or not there is in general a sufficiency of protection in a country, the critical question will nevertheless remain in an asylum case as set out in the sixth proposition by Auld LJ and in an Article 3 case as set out in the fifteenth proposition. Thus under either head a judge must look, notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant and ask himself the above questions.

25. The Immigration Judge in our view never progressed beyond considering the issue of whether the appellant had established systemic insufficiency or a criminal system operated on a discriminatory basis. He at no point in his determination considered that the individual circumstances of the appellant were capable of making a difference to the question of whether there would be sufficient protection available in this case. He did not engage with the issues as set out at proposition 6 and 15 in Bagdanavicius [2005] EWCA Civ 1805.

26. That he has failed to attach due significance to these individual circumstances is clear from first looking at his conclusions as a whole set out between paragraphs 24 and 31 of his determination. In the course of his discussion in these paragraphs the Immigration Judge at no point turns to look at the appellant's personal history and actual suffering of persecutory acts. There is no reference to his being a police officer or to the related background evidence and that the MQM had killed 200 police officers who had stood up against them. There is no consideration of the fact that the appellant has made himself a particular enemy of the MQM and that his brother and wife in quick succession appear to have been killed by the MQM without any apparent protection from the authorities at the relevant time. These are examples of matters relating specifically to the appellant which the Immigration Judge failed to assess correctly.

27. We are of the view that there was considerable merit in the theme which underlay much of Mr McGowan's submissions namely: that the appellant had been looked at by the Immigration Judge as just "any other person" without due regard to the circumstances particular to him. Secondly, his reference to the AH case at the outset of his conclusions in the absence therefrom of any reference to Bagdanavicius tends to point to an approach which is flawed in that it failed to follow the guidance given in Bagdanavicius relating to the importance of the particular circumstances of an appellant insofar as they relate to the issue of sufficiency of protection. It is of course proper to have regard to guidance given in the AH case, however, the Immigration Judge thereafter considers nothing other than the issue of general sufficiency of protection and the appellant's inability to establish systemic failure. That this is the approach of the Immigration Judge is made clear when he states as follows in paragraph 25:

> "The obligation of the state to provide a sufficiency of protection must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. It is not enough for the appellant to point to corruption on the part of individual members of the police, prosecution or justice system. There has to be evidence of systemic or institutionalised unwillingness to afford protection to the victims of persecution by non-state actors; the evidence before me on how the criminal justice system operates in Pakistan does not go nearly that far".

28. This is the Immigration Judge's fundamental conclusion in relation to the case. It is clear from this part of his consideration that he is seeking to decide the issue of whether this appellant would have sufficient protection solely on the basis of being satisfied that there exists a general sufficiency of protection.

29. Thirdly, it is also clear from the way that the Immigration Judge dealt with the documentary productions in paragraph 26 that he makes no

attempt to see these documents in light of the appellant's particular circumstances. Rather he simply brushes them aside. There is no attempt to consider how this information regarding the MQM would impact on the appellant's particular circumstances.

30. Fourthly, at paragraph 27 when looking at the issue of FIRs he confines himself to the issue of whether it has been established that there is a general systemic failure in relation to these.

31. Fifthly, again at paragraph 31 when he turns to summarise his conclusions the Immigration Judge once more refers to the general background evidence that there is no systemic failure.

32. Sixthly, he at no point refers to the Bagdanavicius case.

33. For the foregoing reasons we are of the view that the Immigration Judge has made a material error of law. His whole approach to the case is in our judgement, for the reasons which we have identified, fundamentally flawed. Accordingly we set aside the decision and turn to the issue of what decision to remake.

Our assessment

34. The starting point in assessing whether the appellant would be given sufficient protection if returned to Pakistan is to consider whether there is systemic insufficiency of state protection. In relation to Pakistan, having regard to the case of AH and also to the case of KA and Others (Domestic Violence – Risk on Return) Pakistan CG [2010] UKUT 216 (IAC), it cannot be said that such a general insufficiency of state protection has been established. Neither party submitted that there was, nor do we find, that the background evidence before us demonstrates such as insufficiency.

35. However, as we have outlined above, that is not an end of the matter, regard must be had to the individual circumstances of the appellant with a view to addressing the questions as outlined in the sixth and fifteenth propositions of Auld LJ in Bagdanavicius [2005] EWCA 1605.

36. In assessing risk to an appellant whose family members have suffered persecution or serious harm it is also important to bear in mind the principles set out at Recital 27 of the Qualification Direction 2004/83/EC that:

> "(Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status)".

37. We would stress that it is also particularly important to have regard to the circumstances of the individual where that person has already been subject to persecution or serious harm and therefore falls into the category of persons to whom to Rule 339K of the Immigration Rules applies mirroring Article 4 of the Qualification Directive. That Rule is in the following terms:

> "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution and such harm, will be regarded as a serious indication of the person's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

38. Mindful of these important considerations, we now turn to consider the relevant circumstances and we find these to be:

(a) The background information contained in the documents from 7/1 onwards when taken together with the paragraphs with which reference was made on behalf of the appellant in the background information, namely, the COIR report of November 2008.

(b) The MQM has killed over 200 police officers who have stood up against them in Karachi. The appellant was a police officer in Karachi. That was only a circumstance of limited significance. However, in addition:

(c) The appellant has made an enemy of the MQM in his area by refusing to release supporters of that party on the order of his superiors.

(d) In his role as a police officer he oversaw locally the issue of chalking. He was required to arrest people for doing this. Chalking on his wall was a continual problem. On one occasion on his wall the following was chalked:

'He who is a traitor to the leader deserves to be killed'.

(e) The foregoing was no idle threat. His brother was killed two days after catching people wall chalking. The two suspects were MQM supporters. They were bailed. The appellant tried unsuccessfully to have them detained again. Attempts were made at a high level in the MQM to settle this issue with the appellant but he refused and threats to his safety were made if he did not settle the matter.

(f) His wife was shot and killed and he believed on the basis of his own observations that it was by these men.

(g) He was then accused of kidnapping these men.

(h) On his return to Pakistan he will be arrested and returned to the province of Sindh and will be kept in custody.

39. In light of these circumstances we are satisfied that the appellant suffered past persecution as a result of the local MQM deciding to target him and his family. His brother and wife were killed merely because of their relationship with the appellant and there are no good reasons to consider that upon his return the MQM locally would not seek to repeat actions of this type and target him and/or other members of his family. That would be all the more likely because on return the appellant would clearly be required, in order to defend himself against the accusations of kidnapping, to stand up to the local MQM and seek to have them charged for the two murders of his brother and wife. The evidence does not demonstrate that in relation to these past events the police had taken specific steps to protect the appellant and his family and in the context of what had happened it was not justifiable for the local court to have released the two MQM suspects without at least ensuring the appellant would receive additional protection

40. When taken together the circumstances particular to the appellant's case gave rise to a compelling basis for holding that the authorities in Pakistan would be unlikely to provide the additional protection which the circumstances particular to the appellant reasonably require.

Decision

41. We accordingly allow the appeal on asylum grounds and on human rights grounds.

42. We do not consider this an appropriate case in which to expect the appellant to show he would not have a viable option of internal relocation. For reasons given earlier, it was not in dispute that the FIR raised against him on charges of kidnapping were likely to mean that wherever he went in Pakistan the authorities would hand him over to the police in Karachi.

43. To conclude:

The Immigration Judge materially erred in law and we set aside his decision. The decision we remake is to allow the appellant's appeal.

Signed

Lord Bannatyne

APPENDIX: LIST OF DOCUMENTATION CONSIDERED

Item	Document	Date
1	UK Border Agency, "Country of Origin Information Report: Pakistan"	28 July 2009
2	Daily Nawa-I-Waqt, "Murder of Tehsil Administrator, Muree, protest against the case against a member of the People's Party. ……Procession against DSP and SHO, Shah Nazar. 4 teams organised by RPO, raids at different places, 10 persons arrested." (certified translation dated 30 September 2009)	20 July 2009
3	CDG Rawalpindi, "Contacts List"	22 April 2009
4	BBC, "Clashes mark protest in Pakistan"	12 March 2009
5	Pakistan Elections 2008, "Summary"	27 February 2009
6	Wikipedia, "Cabinet of Pakistan"	7 February 2009
7	Wikipedia, "Ishrat-ul-Ibad Khan"	7 February 2009
8	GEO Pakistan, "Political alliance necessary for country's security: Altaf, Rehman Malik"	12 January 2009
9	MQM, "Federal Advisor for Interior Mr Rehman Malik met Mr Altaf Hussain at MQM International Secretariat in London"	11 January 2009
10	The International News, "MQM poised to join federal govt"	20 December 2008
11	UK Border Agency, "Country of Origin Information Report: Pakistan"	5 November 2008
12	The International News, "Local govt issues to be resolved amicably: Zardari"	18 September 2008
13	The International News, "Rahman Malik meets Altaf Hussain in London"	9 May 2008
14	GEO Pakistan, "MQM to become part of Sindh government"	30 April 2008
15	The International News, "IG to be briefed on probes into May 12, Dec 27 incidents"	23 April 2008
16	Weekly Pulse, "MQMs battle for survival"	19 April 2008
17	Dawn, "MQM urged to review decision"	14 April 2008

Item	Document	Date
18	Pakistan Elections 2007, "MQM to sit on opposition benches"	14 April 2008
19	Sindh Today, "Shoaib Suddle upgraded, named Sindh IG"	12 April 2008
20	Pakistan Link, "MQM names election candidates for NWFP"	December 2007
21	Dawn, "Karachi: JWP slams Muttahida for 'indecent' graffiti"	29 May 2007
22	Teeth Maestro, "MQM threatens 20 journalists"	25 May 2007
23	The International News, "Eight more die in Karachi"	15 May 2007
24	Dawn, "Karachi: PPP blames Musharraf, MQM for violence"	14 May 2007
25	Webindia, "Karachi clash toll 34, Musharraf against Emergency"	13 May 2007
26	The Peninsula, "US think-tank lists MQM as militant outfit"	6 May 2007
27	Refworld, "Pakistan: Information on Mohajir/ Muttahida Qaumi Movement-Altaf (MQM-A)"	09 February 2007
28	MQM, "Pakistan is in great danger – Altaf Hussain"	13 January 2007
29	The Frontier Post, "Ahmad Shah Masoud provides shelter to most wanted terrorists"	16 April 1999