

Case No: CO/3860/99

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday 1 November 2000

Before:

**THE HON MR JUSTICE SCOTT BAKER**

**THE QUEEN**

- v -

**SPECIAL ADJUDICATOR**

**ex parte GABI ILARION RAGMAN**

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(Transcript of the Handed Down Judgment of  
Smith Bernal Reporting Limited, 190 Fleet Street  
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Official Shorthand Writers to the Court)

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**Linda Veloso** (instructed by Figueiredo & Co for the Claimant)  
**Sam Grodzinski** (instructed by The Treasury for the Respondent)

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**Judgment**  
**As Approved by the Court**

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**MR JUSTICE SCOTT BAKER:**

## JUDGMENT

This is an application for judicial review of a decision of Mr L. V. Waumsley a Special Adjudicator who on 17 June 1999 dismissed the Claimant's appeal against the Secretary of State's decision to refuse him asylum. He also upheld the Secretary of State's certification of the claim. The Claimant thus has no right of appeal against the Special Adjudicator's decision.

The Claimant is aged 25 and a Citizen of Romania. He arrived in the United Kingdom on 12 August 1998 and was granted leave to enter as a visitor for 6 months. On 21 September 1998 he was served with illegal entry papers having admitted he had used deception to obtain entry. He then applied for asylum, which was refused by the Secretary of State, and on 9 November 1998 he was told he would be removed as an illegal entrant. His appeal was heard by Mr Waumsley on 12 April 1999 when he was represented by Ms Veloso who has conducted his application before me. The Secretary of State was not represented before the Special Adjudicator but I have been assisted by argument Mr Grodzinski.

The Special Adjudicator found the Claimant to be an entirely credible witness and accepted his evidence regarding events he described having taken place prior from his departure from Romania. The oral evidence before the Special Adjudicator comprised that of the Claimant himself through an interpreter.

The Claimant is a homosexual. He was never arrested or detained himself nor did he have any problems with the police in Romania. His problems arose in the following

way. When he was in his fourth and final year at University it was discovered that he was a homosexual. He was undertaking a physical education course and intended to become a physical education teacher. The director of the University called an assembly. All the students were present. The Claimant was called to the front and his homosexuality was discussed. He was told he had brought shame on the University. His evidence was that he had tried to be discreet about his homosexuality but eventually it had come out. At the assembly it was discussed whether he should be expelled or allowed to finish his course. It was decided he could finish the course but he would not be allowed to become a physical education teacher because he would represent a danger to children.

After it became known he was a homosexual he was subjected to insults and ridiculed. He was insulted every time he left home. He told the Special Adjudicator it was 'like a free theatre' and he had to make a real effort to keep calm. He told the Special Adjudicator that Romanian Society is still very hostile to homosexuals and that the public attitude is that they are mentally insane. There is concern to keep them at a distance because it is thought they can have an affect on 'normal' people. There was no one to whom he could turn for help.

His evidence to the Special Adjudicator was that the attitude of the Romanian Government towards homosexuals is hostile. Under Article 200 of the penal code, homosexual acts between consenting adults are generally no longer criminal if committed in private but they are if the act is committed in public or has produced a

public scandal. The Claimant said the law had changed because Romania wants to join the European Union but the public's attitude has not changed.

The Claimant's evidence also referred to contact since he had been in the United Kingdom with his homosexual partner in Romania. The partner had told him he was going to leave the country because of the problems he had had with the police. The attitude of the police towards homosexuals generally remained hostile throughout Romania. Homosexuals are at risk of being arrested, taken to the police station, ridiculed and beaten up. The Special Adjudicator noted, however, that the Claimant had never been arrested or detained and had not himself had any problem with the police or the Romanian authorities apart from the episode in his last year at University. It is not clear how long he remained in Romania after it was discovered he was a homosexual, but he did not experience the events which his partner claims were rife.

The Special Adjudicator made these findings. That Romania is a country in which homosexuals are still subject to general hostility and prejudice on the part of the authorities and/or the public generally. Secondly that in these circumstances homosexuals can constitute a 'particular social group' within the meaning of the 1951 Convention. He then correctly directed himself that it was necessary to go on to consider whether the situation the Claimant would be likely to face if he were to return to Romania would, by reason of his membership of that particular social group, be such as to constitute 'persecution' so as to entitle him to claim international protection under the 1951 Convention.

Persecution is not defined in the 1951 Convention. Nor is there any universally accepted definition of the term. Paragraph 51 of the U.N.H.C.R. Handbook on Procedures and Criteria for Determining Refugee Status (1979) says that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. However other serious violations of human rights for the same reasons can also constitute persecution. Whether other prejudicial actions or threats would amount to persecution will depend on the particular circumstances of each case.

The thrust of Ms Veloso's submission is that the Special Adjudicator gave no reasons why this case does not fit within any of the various definitions of persecution. He does not say why the facts of this case do not amount to persecution. Albeit the Claimant was fortunate to leave before anything more serious happened, considerable ill treatment would be likely on his return.

'Persecution' is an ordinary English word and connotes 'persistent and serious ill treatment.' As Staughton L. J. said in Ravichandran -v- The Secretary of State for the Home Department [1996] Imm. A.R. 97 at 114:

"persecution must at least be persistent and serious ill treatment without just cause by the state, or from which the state can provide protection but chooses not to do so.'

In Horvath -v- The Secretary of State for the Home Department [2000] Imm. A.R. 205 at 240 Ward L. J. pointed out that:

"the threshold for establishing persecution is set high. Anything short of a really serious flouting of the citizen's human rights and dignities will not do. Adjudicators and appeal tribunals should not flinch from applying a strict test."

Nolan J, as he then was, had said much the same R-v. I.A.T. ex parte Jonah [1985]

Imm.A.R. 7 having applied to the word 'persecution' its dictionary meaning of :

"to pursue with malignancy or injurious action; especially to oppress for holding a heretical opinion or belief"

The Special Adjudicator cited this judgment and also Professor Hathaway's detailed analysis of persecution based on a fourfold hierarchy of human rights. He was well aware that there was no universally accepted definition of the word, that he should give it its ordinary English meaning and, looking at the case in the round in the light of all the relevant circumstances, ask himself whether a well founded fear of persecution for a Convention reason had been established.

Mr Grodzinski cited a passage from the judgment of Aldous L.J. in Kagima -v- The Secretary of State for the Home Department [1997] Imm. A.R. 137 at 140 as authority for the correct approach in a case such as this:

"Mr Ashford -Thom, who appeared for the Secretary of State, submitted that the word 'persecution' was an ordinary English word and it was for the Special Adjudicator to decide whether the facts as found amounted to persecution for a convention reason. The fact that a court might, or would, have come to a different conclusion did not mean that the Special Adjudicator had erred in law. That only arose if this court concluded that the Special Adjudicator's conclusion was unreasonable in the sense that it was a conclusion that no reasonable Adjudicator could come to."

Both the other members of the Court agreed and I am satisfied it is the correct approach for the present case. It is for the Special Adjudicator to decide, on the facts of the case before him, whether the conduct under consideration falls on the persecution side of the line or whether in reality it is something less.

Schiemann L.J. touched on the same question in Blanusa -v- The Secretary of State of the Home Department 18 May 1999 (unreported C. A.). He said at p.4 that:

"...where the evidence reveals a state of affairs where a person properly instructed as to the relevant law could have come either to the conclusion that there was a reasonable likelihood of persecution or to the conclusion that there was not a reasonable likelihood of persecution then this court has no power to interfere. Parliament has given the power to make the relevant decision in cases such as this to a specialist tribunal rather than to this court. In my judgment this is a case where it was open to the tribunal to come to either of those conclusions and therefore this court has no power to intervene."

It seems to me that the logical conclusion to Ms Veloso argument is that all known homosexuals would ipso facto be entitled to asylum from Romania. That is not correct. Each case must be considered in the light of its own facts. That is precisely what the Special Adjudicator did in the present case. He considered carefully both the Claimant's evidence and the documentary country material before him, citing passages from the Home Office Country Assessment and referring in detail to the report from ACCEPT, an organisation formed with the aim of working towards acceptance in Romanian society of all individuals regardless of their sexual orientation. He noted that a fact finding mission conducted by ACCEPT in September 1996 disclosed a widespread atavistic attitude on the part of the Romanian police in two large centres, but he concluded that the hostility and prejudice to which homosexuals generally are

subjected in Romania, uncaring and cruel as it is, is not of such a nature or severity as to amount to persecution. He reached that conclusion, he said, with regret and in my judgment it is a conclusion with which this Court could not possibly interfere.

The right protected by the Convention is not a right to practise as a homosexual; it is the right not to suffer persecution for doing so. Unfortunately for the Claimant, as this case demonstrates, there can be various degrees of hostility towards homosexuals that nevertheless fall short of persecution.

The remaining point relied upon by Ms Veloso is a Human Rights point. She submits that following the recent inclusion into English Law of the European Convention on Human Rights, through the Human Rights Act 1998, its consideration by the Court is essential. She relies on Article 3 and Article 8. The answer is that section 65 of the Human Rights Act 1998 does not have effect where the decision was taken before 2 October 2000 (see paragraph (1) (7) of Schedule 2).

In my judgment no error of law is to be found in the Special Adjudicator's decision. Nor were his reasons inadequate. They were in my view clear and to the point. Accordingly this claim for judicial review fails.