ILPA information sheet

Darfur Judgment 2

17th December 2007

In November, the House of Lords gave judgment in *SSHD v AH (Sudan)* [2007] UKHL 47. This was the Secretary of State's appeal against the decision of the Court of Appeal, which was highlighted in the April "Darfur Judgment" information sheet. The case is about three Sudanese nationals who face persecution in Darfur but who were refused asylum because it was said they could relocate to Khartoum.

The House of Lords has allowed the Secretary of State's appeal and reversed the judgment of the Court of Appeal. For the appellants this means that they now face removal to Sudan unless they have new evidence justifying fresh claims or are able to bring their case to the European Court of Human Rights.

Substance of the case

The substance of the case has not changed since the Court of Appeal judgment. The question the House of Lords considered was what is the correct test for deciding whether a person, who faces a real risk of persecution if returning to his home area, can be expected to seek safety by relocating within his home country (the "internal relocation test"). For a fuller summary of the substance, see the April "Darfur Judgment" information sheet.

The House of Lords judgment

All five judges in the House of Lords agreed. They decided that, although there were significant parts of the earlier decision of the Asylum and Immigration Tribunal (AIT) which were poorly reasoned, the Court of Appeal had been wrong to find any error of law in the AIT's decision to dismiss the appeals of the three appellants. The judges accepted that there was substance in some of the criticisms made by the Court of Appeal. However, they concluded that if the AIT's decision was read as a whole it could be safely concluded, given the experience and expertise of the AIT, that it had not fallen into any error despite the way it had expressed its reasons at certain parts of its decision.

The House of Lords also decided that the Court of Appeal had been wrong to conclude that the key comparison required by the internal relocation test was between the place where the asylum-seeker had lived and the place where he or she might be expected to relocate. The Court of Appeal had been wrong to criticise the AIT for comparing the situation in the possible place of relocation with the general country situation.

The Court of Appeal, however, had been correct that the internal relocation test did not require an asylum-seeker to show that the conditions in the possible place of relocation would put him or her at risk of torture or degrading treatment contrary to Article 3 of the European Convention. An asylum-seeker should never be expected to relocate to a place where he or she faced such risks. However, even where he or she did not face such serious risks, there may be other reasons why it would be unreasonable to expect him or her to relocate.

The correct internal relocation test

The House of Lords expressed the test in these terms:

> "*The decision-maker, taking into account all the 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…*"

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An asylum-seeker must first show that he or she faces a real risk of persecution if returning home. If there is no risk, there is no need to consider whether he or she should relocate elsewhere in his or her home country.

Circumstances that do not meet the Article 3 threshold (degrading treatment) may nevertheless mean that it is not reasonable to expect the asylum-seeker to relocate. Circumstances that do reach that threshold will always mean that relocation is unreasonable.

The particular circumstances of the individual asylum-seeker must be considered, including his or her age, gender, experience, health, skills, family ties and previous way of life. It is necessary to assess the impact upon the individual of expecting him or her to relocate to another area. Conditions that may be reasonable or normal for one person, may be unreasonable for another. Nevertheless, the general conditions faced by those from the asylum-seeker's home country will be relevant.

Effect of the House of Lords judgment

The judgment does not mean that it is safe or reasonable to return all Sudanese or all Darfuris to Khartoum. For the three appellants in this case, it means they may be returned to Khartoum unless there is new evidence or an application to challenge the House of Lords decision in the European Court of Human Rights.

Nor does the judgment mean the House of Lords agree with the AIT's factual assessment of the conditions in Khartoum. The House of Lords' judges accepted that the AIT made no error of law and so did not look at the evidence of conditions in Khartoum because, without an error of law, they had no jurisdiction to reconsider the AIT's factual assessment of the evidence. The House of Lords did not, therefore, consider the Court of Appeal's assessment; although the Court of Appeal had said evidence of the conditions in IDP camps or squatter areas in Khartoum "*make frightening reading*".

More than a year has passed since the AIT's decision in this case. That decision was given in August 2006. Given the difference of view on the facts (i.e. what was the situation in Khartoum to which the appellants would be returned) between the AIT and the Court of Appeal, it may well be that the AIT needs to give further consideration to current conditions in Khartoum on up to date evidence.

A copy of the House of Lords judgment is available at
http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd071114/sshd-1.htm

A copy of the Court of Appeal judgment is available at
http://www.bailii.org/ew/cases/EWCA/Civ/2007/297.html

The AIT decision against which the appeal was brought is called *HGMO (Sudan)*, and is available at
http://www.bailii.org/uk/cases/UKIAT/2006/00062.html