



Ireland - B.D.(Bhutan and Nepal) v The Minister for Justice and Equality & ors

The applicant, a citizen of Bhutan of Nepali ethnicity was refused asylum in Ireland as the tribunal held that the applicant was stateless and that his claim for refugee status was to be determined by reference to Nepal. The applicant sought for this decision to be quashed in that the Tribunal failed to consider the applicant's risk of persecution in Bhutan. The Court dismissed the application holding that that the discriminatory and persecutory nature of a law depriving persons of nationality is not relevant to the determination of citizenship for the purposes of refugee status or statelessness.

Case name (in original language) : B.D.(Bhutan and Nepal) v The Minister for Justice and Equality & ors

Case status: Decided

Case number: [2018] IEHC 461

Citation: B.D.(Bhutan and Nepal) v The Minister for Justice and Equality & ors [2018] IEHC 461

Date of decision: 17/07/2018

State: Ireland

Court / UN Treaty Body: High Court

Language(s) the decision is available in: English

Applicant's country of birth: Bhutan

Applicant's country of residence: Ireland {Republic}

Legal instruments: 1954 Statelessness Convention, Other international law

Key aspects: Determination/confirmation of nationality, Refugee status determination, Statelessness and asylum, Statelessness determination

Relevant Legislative Provisions:

1A(2) and 1E. Article 1A(2) of the 1951 Convention Relating to the Status of Refugees

art. 1 (1) 1954 Statelessness Convention

art. 1, The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930

Facts

The applicant was born in Bhutan of Nepalese ethnicity. He arrived in Ireland from India and sought asylum, claiming that the Bhutan regime had been expelling as many Nepalese as possible. The applicant said he was involved in a protest against the Bhutanese government in 1990 and that his father was later killed and his mother disappeared. The applicant then fled to Nepal where he lived without legal status for about 20 years, before going to India and ultimately Ireland.

Despite the applicant submitting to the Tribunal that he was not stateless and was Bhutanese, he wrote in his country information that the Bhutanese state had a practice of depriving Nepalese speaking members of the population of their citizenship.

The Tribunal held that the applicant had no nationality and that his claim for refugee status was to be assessed by reference to Nepal.

Following the Tribunal decision, the applicant instituted proceedings seeking to quash that decision.

Legal arguments by the applicant

Grounds for appeal:

1. Effective remedy
2. Where statelessness derives from a persecutory deprivation of nationality, should that deprivation be disregarded?
3. The failure to consider whether the applicant could be returned to Nepal (not accepted by the Judge as it was not submitted before the Tribunal)
4. The failure to consider whether the applicant could be returned to Nepal
5. Failure to address the applicant's case of persecution in Bhutan.
6. Allegation that the statement of grounds raise direct and important issues of European Union as well as domestic law.

Arguments:

1. Deprivation of citizenship should not be recognised as *de jure* where that deprivation is manifestly in breach of international law.
2. Deprivation of citizenship could in itself amount to persecution

Legal arguments by the opposing party

The applicant was stateless and his claim for refugee status was to be assessed by reference to Nepal.

Decision & Reasoning

The Court held that there was no basis to disturb the finding of the tribunal that the applicant's country of former habitual residence as a stateless person was Nepal.

Does the determination of nationality have to be arrived at by reference to the law of the country as applied by it or by reference to international law?

The court held that the discriminatory and persecutory nature of a law depriving persons of nationality is not relevant to the determination of citizenship for the purposes of refugee status or statelessness.

In relation to the applicant's argument that deprivation of citizenship could in itself amount to persecution, the Court held that this could be the case if they were concerned only with the position in the country that deprives the person of citizenship as was the case in *E.B. (Ethiopia) v. Secretary of State for the Home Department* [2007] EWCA Civ 809 [2009] Q.B. 1. However, the court reasoned that the argument becomes circular in the present context where the deprivation of citizenship means that the asylum claim is to be determined by reference to a country other than the country of former citizenship.

The court considered that there were three possible ways of approaching the question at issue.

1. That the nationality deprivation should be taken at face value in accordance with the internal law and practice of the state concerned, disregarding for this purpose the question of whether it amounts to discrimination or persecution. This reflects the submission made by the UNHCR.

2. Nationality deprivation should be disregarded if contrary to international human rights law.
3. Nationality deprivation should be disregarded unless it amounts to a breach of a fundamental norm of international law going beyond mere discrimination or persecution

This third point was not argued by the applicant before the tribunal and therefore it couldn't arise in this case. The Court held however that had this point arisen, it would have followed the UNCHR submission. (para. 23)

"The UNHCR makes clear that it is not in any way endorsing discrimination or persecutory deprivation of nationality and neither quite obviously is the court but their submissions are simply making the point that the discrimination or persecutory nature of such deprivation should be disregarded for the purposes of art. 1(1) of the Statelessness Convention and likewise for related purposes of the Refugee Convention." (para. 24)

The applicant's argument that if the court upheld the UNHCR submission then the court would be "absolving states from their international law obligations" was rejected as being fundamentally misconceived. The Court reasoned that international human rights law stands in its entirety.

Application of Refugee Definition

The Court held that the applicant was deprived of Bhutanese nationality by Bhutanese law, and even assuming that such law is contrary to international human rights standards, the applicant must be regarded as stateless, as found by the tribunal.

Decision documents

[%5B2018%5D%20IEHC%20461.pdf](#)

Outcome

Application dismissed. The question of a reference to the CJEU did not arise.

Caselaw cited

BDR v Refugee Appeals Tribunal [2016] IEHC 274

D.T. v. Refugee Appeals Tribunal (No. 1) (Unreported, O'Keefe J., 18th July, 2012)

D.T. v Refugee Appeals Tribunal (No. 2) [2012] IEHC 562, [2012] 12 JIC 2104

D.T. v. Refugee Appeals Tribunal [2017] IESC 45 (Unreported, Supreme Court, 14th June, 2017)

Liechtenstein v. Guatemala [1955] I.C.J. 1 (the Nottebohm case) (6th April, 1955)

S.B. v. Refugee Appeals Tribunal [2009] IEHC 270 (Unreported, High Court, 18th June, 2009)

T.D.K. v. Refugee Appeals Tribunal [2010] IEHC 438 (Unreported, High Court, 3rd December, 2012)

R.B.V. v. Refugee Appeals Tribunal (Unreported, High Court, 7th February, 2012)

E.B. (Ethiopia) v. Secretary of State for the Home Department [2007] EWCA Civ 809 [2009] Q.B. 1.

Decision of the Federal Administrative Court 10 C 50.07 (BVerwG 26th February, 2009) (Germany)

Third party interventions

Amicus curiae of UNHCR in the case of B.D.(Bhutan and Nepal) -v- The Minister for Justice and Equality & ors: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5bb23fdb4>