STATELESSNESS
Case Law Database

# UK - HMA v Secretary of State for the Home Department

The case concerned the removal of the applicant, a stateless Palestinian individual who had been habitually resident in Syria and present in the United Kingdom since 2007, to the Palestinian National Authority (PNA). It was held by the – that the PNA could be considered as a safe third country despite it not being formally recognised as a state. It was also held that the  Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection (the Qualification Directive), and for the content of the protection granted could not be interpreted as guaranteeing a resident permit to all those in receipt of subsidiary protection.

**Case status:** Decided
**Citation:** [2016] CSIH 85
**Date of decision:** 16/11/2016
**Court / UN Treaty Body:** UK Court of Session (Inner House, Extra Division)
**Language(s) the decision is available in:** English
**Applicant's country of residence:** United Kingdom
**Key aspects:** Country of return,  Deportation and removal,  Statelessness and asylum
**Relevant Legislative Provisions:**

1. Charter of Fundamental Rights of the European Union art.1; art.18
2. Convention relating to the Status of Refugees 1951 (United Nations)
3. Directive 2004/83 art.2(e); art.24 (Qualification Directive)
4. Directive 2005/85 art.23; art.24; art.25; art.27 (Procedures Directive)
5. European Convention on Human Rights art.8
6. Tribunals, Courts and Enforcement Act 2007 (c.15) s.13

**Facts**

Hassan Mahmoud al-Khatib, a Palestinian formerly resident in the Syrian Arab Republic, entered the United Kingdom in November 2007 and sought asylum. His claim was refused, as was an appeal against the refusal, by determination of the Asylum and Immigration Tribunal. His application to appeal against the determination to the Upper Tribunal was refused. On 16 January 2014, the Secretary of State served on the appellant notice of her decision to remove him from the United Kingdom. The appellant's appeal to the First-tier Tribunal was dismissed. The appellant sought permission of the UT to appeal, which was refused. He subsequently presented a petition for judicial review, seeking reduction of the decision to refuse him leave to appeal. The petition was granted, with permission to appeal to the UT being granted at a later date. The appellant's case was thereafter heard by the UT, which refused his appeal. On 22 October 2015, the UT granted permission to appeal to the Inner House.

**Legal arguments by the applicant**

The applicant argued that, as a Palestinian registered with United Nations Relief and Works Agency, he was stateless. He had been living in Syria prior to his arrival in the United Kingdom. While it was agreed by both parties that he would be subject to risk of serious harm if returned to Syria, the applicant argued that since the PNA and Gaza were not recognised as a state by the UK, then they would not classify as a safe third country.

The applicant relied on Directive 2004/83/EC to argue that stateless persons should automatically be granted a leave to remain where, should they be returned to the country of former residence, they would face serious risk of harm. The appellant accepted that he could not rely on the Refugee Convention to prevent his expulsion to the PNA.

The applicant also argued that he was entitled to subsidiary protection under the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ("the Procedures Directive").

**Legal arguments by the opposing party**

The secretary of state argued that their intention was to return the applicant toin a territory where he would face no such harm, i.e. the territory of the PNA. Consequently, neither the 2004 or the 2005 directive would apply. The respondent further argued that such interpretation was compliant with the principle of *non-refoulement* per the Refugee Convention and the European Convention on Human Rights and the Tampere Conclusion 13, which had not been altered by the Qualifications Directive. Art.21 of the Qualification Directive applied to only expulsion that contravened the principle of non-refoulement, therefore, under the maxim *unius est exclusio alterius*, it would not apply to any other form of expulsion. Art.24 of the Qualification Directive could not be interpreted as containing a prohibition of expulsion, but only with the formalities of issuing a residence permit.

Individuals entitled to refugee status, and the appellant conceded he was not, could be lawfully expelled to a safe third country under arts. 32 and 33 of the Refugee Convention.

**Decision & Reasoning**

The court firstly stated that it would assume that the appellant would be at risk of serious harm if returned to Syria and that, subject to the applicant's contention that the PNA cannot qualify as a safe third country under the Procedures Directive, such risk would not be present in the PNA.

When considering the Procedures Directive, it was accepted that pursuant to art.3(3) the entirety of the provisions relating to Subsidiary Protection would be applicable, as the applicant was not entitled to refugee status.

The court found that, regardless of his eligibility to refugee status, the applicant could be eligible for subsidiary protection under the Qualification Directive. However, the court accepted that the United Kingdom could exercise his power to expel the applicant, so long as it did not expel him in such a way that would breach the principle of *non-refoulement*. The court accepted that the concept of safe third country should be interpreted widely, to include the PNA despite it not being recognised as a state. The court rejected the argument that art.24 should be interpreted to require resident permits being awarded to all those beneficiaries of subsidiary protection. This is because it would represent a shift in the awarding of

international protection. Next, it would undermine the principle of *non-refoulement*, as all the recipients of international protection would have right to reside. Third, the rather important right to reside would be regarded as a "*side wind*". Fourth, it places the Qualification Directive in contradiction with the Procedure Directive, which allows for the expulsion to safe third countries.

Lastly, the Court rejected all the applicant's arguments based on the Charter of Fundamental rights.

**Outcome**

The appeal was dismissed.

**Caselaw cited**

1. T v Land Baden-Wurttemberg (C-373/13)EU:C:2015:413 (24 June 2015)
2. R. (on the application of ST (Eritrea)) v Secretary of State for the Home Department [2012] UKSC 12 (21 March 2012)
3. R. (on the application of ZO (Somalia)) v Secretary of State for the Home Department [2010] UKSC 36 (28 July 2010)
4. Bolbol v Bevandorlasi es Allampolgarsagi Hivatal (C-31/09)EU:C:2010:351 (17 June 2010)
5. El-Ali v Secretary of State for the Home Department [2002] EWCA Civ 1103 (26 July 2002)
6. Ahmed v Austria (25964/94) (1997) 24 E.H.R.R. 278 (17 December 1996)