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100%

592 Prohibition of discrimination

the Roma was refused after a much longer interview. Unlike the ERRC test, we have a transcript from which one can see what it was about the Roma's answers which might have made the official suspicious even if he had not been a Roma. But the question still remains whether a non-Roma who gave similar answers would have been treated the same. The tiny numbers of non-Roma refused may suggest otherwise.

95. Then there are the claimants in the case. Three of them made no secret of their intention to seek asylum on arrival in the UK. They do not therefore complain of discrimination, because their less favourable treatment was on grounds other than their ethnic origin. Two of the claimants also intended to claim asylum but pretended that they did not. It is difficult therefore for them to complain of more intensive questioning which revealed their true intentions. The last claimant, HM, was refused entry in circumstances which again invite the question whether a non-Roma in similar circumstances would have been refused. She was of obviously Roma appearance, aged 61 at the time, living with her husband and children, but travelling alone. Her husband was recovering from a heart attack and she was awaiting spinal surgery. Both were unemployed and living on social security because of ill health, which might not be thought surprising given their age. She planned to visit her grandson-in-law in England, and was carrying a sponsorship letter from him, together with a return ticket and £100 cash. These facts do not suggest someone who is planning to abandon her husband and five children and move to England. On the other hand, the file note records that the grandson-in-law states that he has been awarded refugee status but provides no evidence of this, is currently living on benefits though seeking employment, and makes no mention of the grand-daughter to whom he was presumably married.

96. These are judicial review proceedings, not a discrimination claim in the county court. No oral evidence has been heard or findings of fact in the individual cases made. The question is not whether HM was indeed intending to claim asylum on arrival, although it seems somewhat unlikely in the circumstances. The question is whether a non-Roma grandmother would have been treated in the same way. Again, the ERRC figures and the outcome of their test are some evidence that she would not.

97. It is not the object of these proceedings to make a finding of discrimination in any individual case. The object, as Burton J pointed out (Judgment, para 53(iv)), is to establish a case that the Prague operation was carried out in a discriminatory fashion. All the evidence before us, other than that of the intentions of those in charge of the operation, which intentions were not conveyed to the officers on the ground, supports the inference that Roma were, simply because they were Roma, routinely treated with more suspicion and subjected to more intensive and intrusive questioning than non-Roma. There is nothing surprising about this. Indeed, the Court of Appeal considered it 'wholly inevitable'. This may be going too far. But setting up an operation like this, prompted by an influx of asylum seekers who are overwhelmingly from one comparatively easily identifiable racial or ethnic group, requires enormous care if it is to be done without discrimination. That did not happen. The inevitable conclusion is that the operation was inherently and systemically discriminatory and unlawful.

98. In this respect it was not only unlawful in domestic law but also contrary to our obligations under customary international law and under international treaties to which the United Kingdom is a party. It is commonplace in international human rights instruments to declare that everyone is entitled to the rights and freedoms they set forth without distinction

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