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588 Prohibition of discrimination

of Roma and non-Roma refused entry was explicable by reference to the proportions of Roma and non-Roma who were likely to seek asylum.

81. The Court of Appeal accepted that the judge was entitled to find that the immigration officers tried to give both Roma and non-Roma a fair and equal opportunity to satisfy them that they were coming to the United Kingdom for a permitted purpose and not to claim asylum once here. But they considered it 'wholly inevitable' that, being aware that Roma have a much greater incentive to claim asylum and that the vast majority, if not all, of those seeking asylum from the Czech Republic are Roma, immigration officers will treat their answers with greater scepticism, will be less easily persuaded that they are coming for a permitted purpose, and that 'generally, therefore, Roma are questioned for longer and more intensively than non-Roma and are more likely to be refused leave to enter than non-Roma' (Simon Brown LJ, paras 66-67). Laws LJ referred to the last of these propositions as 'plainly true on the facts of this case' (para 102). Simon Brown LJ, with whom Mantell LJ agreed, held that nevertheless this was not less favourable treatment, or if it was, it was not on racial grounds. The Roma were not being treated differently qua Roma but qua potential asylum-seekers. Laws LJ considered it 'inescapable' that this was less favourable treatment (para 102). He also concluded (para 109) that this was discrimination:

'One asks Lord Steyn's question [in *Nagarajan v. London Regional Transport* [2000] 1 A.C. 501, 521-2]: why did he treat the Roma less favourably? It may be said that there are two possible answers: (1) because he is Roma; (2) because he is more likely to be advancing a false application for leave to enter as a visitor. But it seems to me inescapable that the reality is that the officer treated the Roma less favourably because Roma are (for very well understood reasons) more likely to wish to seek asylum and thus, more likely to put forward a false claim to enter as a visitor. The officer has applied a stereotype; though one which may very likely be true. That is not permissible. More pointedly, he has an entirely proper reason (or motive) for treating the Roma less favourably on racial grounds: his duty to refuse those without a claim under the Rules, manifestly including covert asylum-seekers, and his knowledge that the Roma is more likely to be a covert asylum-seeker. But that is irrelevant to the claim under s 1(1)(a) of the 1976 Act.'

82. On the factual premises adopted by the Court of Appeal, this conclusion must be correct as a matter of law. The Roma were being treated more sceptically than the non-Roma. There was a good reason for this. How did the immigration officers know to treat them more sceptically? Because they were Roma. That is acting on racial grounds. If a person acts on racial grounds, the reason why he does so is irrelevant: see Lord Nicholls of Birkenhead in *Nagarajan* at p 511. The law reports are full of examples of obviously discriminatory treatment which was in no way motivated by racism or sexism and often brought about by pressures beyond the discriminators' control: the council which sacked a black road sweeper to whom the union objected in order to avoid industrial action (*R v. Commission for Racial Equality, Ex p Westminster City Council* [1985] ICR 827); the council which for historical reasons provided fewer selective school places for girls than for boys (*R v. Birmingham City Council, Ex p Equal Opportunities Commission* [1989] AC 1155). But it goes further than this. The person may be acting on belief or assumptions about members of the sex or racial group involved which are often true and which if true would provide a good reason for the less favourable treatment in question. But 'what may be true of a group may not be true of a significant number of individuals within that group' (see *Hartmann J in Equal Opportunities Commission v. Director of Education* [2001] 2 HKLRD 690, para 86, High

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