Neutral Citation Number: [2006] IEHC 23

THE HIGH COURT
JUDICIAL REVIEW

[2004 No. 887 JR]

BETWEEN

PRINCE URUEMUSODE EVUARHERHE

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Judgment of Mr. Justice Clarke delivered the 26th January, 2006.

1. Introduction

1.1 In this case the applicant ("Prince Evuarherhe") has already been given leave to seek judicial review of a decision of the second named respondent ("RAT") in which the RAT refused Prince Evuarherhe's appeal against a previous decision of the Refugee Applications Commissioner ("RAC") to the effect that a recommendation in favour of granting refugee status be refused.

1.2 In the ordinary way the application for leave was on notice to the respondents and required Prince Evuarherhe to establish substantial grounds in order that leave be given. In this case the leave application was contested by the respondents. While a number of grounds had been advanced as the basis for the proposed challenge to the decision of the RAT, this court (Herbert J.) by order of 23rd June, 2005, granted leave which was limited to the following:-

> "The applicant do have leave to apply for an order quashing the decision of the second named respondent dated 27th day of August, 2004, that the applicant's appeal against the recommendation of the Refugee Applications Commissioner be refused by way of application for judicial review in respect of the said applicant as set forth in paragraph D(1) of the said statement on the grounds set forth at paragraph E(4) in the aforesaid statement".

This substantive hearing is, therefore, confined to the issues in respect of which leave has been granted. Ground E(4) states as follows:-

> "The recommendation of the second respondent was unreasonable and/or irrational and/or contrary to common sense in that he had no admissible or any evidence to support his view that State protection would be available to the applicant should he be returned to Nigeria. Moreover, such a view runs contrary to then (*sic*) evidence presented by the applicant both at the oral hearing and prior to same".

1.3 There is, therefore, only one issue in this case. It is as to whether the RAT, in coming to the decision which it did, can be said to have been irrational in the legal sense and in particular whether, as is contended, there was no evidence to support the view expressed by the RAT concerning the availability of State protection.

2. Background Facts

2.1 Having regard to the narrow focus of the challenge which I now have to consider, it is not necessary to set out in full all of the facts concerning the process before the statutory bodies charged with considering Prince Evuarherhe's application for refugee status. However, in brief terms Prince Evuarherhe is a Nigerian national having been born on 25th March, 1970. In circumstances to which I will refer he arrived and applied for asylum in the State in March 2004 and went through the normal process required of such asylum seekers. He completed the standard form questionnaire and was interviewed by an officer of the RAC on 19th April, 2004. The RAC made a recommendation on 6th May, 2004 to the effect that refugee status should not be recommended. Against that recommendation an appeal was brought by notice of appeal dated 31st May, 2004. The RAT conducted an oral hearing of that appeal on 29th June, 2004 and made a decision refusing the appeal and affirming the recommendation to deny refugee status on 27th August, 2004. That decision was communicated to Prince Evuarherhe under cover of a letter of 22nd September, 2004.

2.2 Insofar as material to the issues which I now have to address it should be noted that the basis of the decision of the RAC to refuse a recommendation in favour of refugee status, stemmed, in the main, from a finding of lack of credibility.

2.3 It would appear, however, that the reasoning of the RAT (which is, of course, the decision now under challenge) was different. The member of the RAT concerned having indicated that he was not satisfied that a well founded fear of persecution for one of the reasons set out in s. 2 of the Refugee Act, 1996 had been established set out his reasons as follows:-

> "1. This applicant claims that he suffered persecution arising out of the riots that took place during the Miss World Contest in November 2002. Country of origin information has indicated that the police quelled the riots after a few days. Also, country of origin information has indicated that police protection would be available to this applicant concerning the alleged crime that was perpetrated on him. Therefore, I am of the view that State protection will be available to this applicant then (sic) paragraph 100 of the UNCHR Handbook would be relevant in this instance. That states as follows:-
>
> > "Whenever the protection of the country of nationality is available, and there is no ground based on a well founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee".
>
> 2. I note that this applicant spent approximately 12 months with his wife's uncle in Lagos. He was quite safe there. This applicant's fear must be well founded. The fact that the applicant lived, quite safely, for approximately 12 months after November 2002 indicates to me that this applicant's fear is not "well founded".
>
> 3. The applicant said that he is afraid to return to his father's tribe because is (sic) father is an idol worshipper. There is no obligation on this applicant to return to his father's tribe. Also he has not furnished any evidence to the effect that he would be persecuted in any way should he return. In any event, I take the view that State protection would be available to him should he be subjected to any ill treatment by his father."

2.4 As might be inferred from the above quotation Prince Evuarherhe had made the case that his fear of persecution stemmed from his position as a Christian Pastor and was of both Muslim groups and of his father's tribe. His case relied on his account of being attacked and injured by a Muslim mob during riots in his home town of Kaduna associated with the Miss World Contest. No specific evidence of any incidents concerning his father's tribe was tendered.

2.5 As will be seen from the above the Tribunal Member concerned placed reliance upon State protection in relation to two aspects of the reasoning set out. This appeal is concerned with whether there was a proper basis for that aspect of the conclusions and, if it be established that there was not a proper basis for some or all of the findings made by the RAT, whether that is fatal to the overall conclusions reached.

3. The Law
3.1 Counsel for Prince Evuarherhe placed reliance on two separate judgments in the case of *Imafu v. The Minister for Justice Equality and Law Reform*. I granted leave in that case (Unreported, High Court, Clarke J., 27th May, 2005). Leave was confined to a ground described in that judgment as being based on the Horvath principle being derived from United Kingdom authorities stemming from the decision in Hor*vath v. Secretary of State for The Home Department (United Nations High Commissioner for Refugees Intervening)* (1999) INLR 7.

3.2 The substantive hearing was confined to that ground. In the judgment at that substantive hearing (Unreported, High Court, Peart J., 9th December, 2005) the following passage from the judgment of His Honour Judge Pearl in *Horvath* was accepted as being a correct and appropriate statement of principle:-

> "It is argued that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is argued that one cannot assess a claim without placing that claim into the context of the background information of the country of origin information. In other words, the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin."

3.3 However, while accepting that principle, Peart J. made clear that the extent (if any) to which it may be necessary for the Tribunal Member concerned to refer to country of origin information as part of a credibility assessment is dependant on the facts of each individual case. For the reasons set out by Peart J. in his judgment in *Imafu* he was not satisfied that, having regard to the nature of the country of origin information concerned and to the nature of the evidence whose credibility was under consideration, there was any failure, on the particular facts of that case, to consider credibility in a proper fashion.

3.4 I should say that I fully agree with the qualification placed by Peart J. on the *Horvath* principle in his judgment. Whether or not there has been a failure to properly assess credibility in the context of country of origin information is not a question of technicality. It is a question of substance which requires to be assessed in the light of the country of origin information concerned and the reasons for doubting the credibility of the applicant in the case concerned.

3.5 However, in any event, it does not seem to me that *Imafu* or *Horvath* are of any relevance to this case. Those cases are concerned with decisions in which the credibility of the applicant concerned was doubted. While the decision of the RAC in this case did make findings of lack of credibility, there is nothing in the determination of the RAT (which is the decision with which I am concerned) from which it would be reasonable to infer that the decision maker based his conclusions on any finding of lack of credibility. Rather the reasoning (which I have set out in full above) accepts the account given as credible. However, for the reasons specified by the member concerned he was not of the view that that account, when taken in conjunction with country of origin information, was sufficient to allow him to conclude that a well founded fear of persecution for a convention reason existed.

3.6 That leads to the question of State protection. In the course of the determination of the RAT reference is made to the relevant passage from the UNHCR Handbook. There is no doubt but that the Tribunal Member concerned accurately stated the law, which is to the effect that a person is not entitled to refugee status if there could be said to be adequate State protection available in respect of the type of persecution feared and in the absence of there being any good reason why it would be reasonable for the person concerned not to avail of that State protection.

3.7 It has often been pointed out that State protection does not mean a State guarantee. No State is in a position, in practice, to guarantee the complete safety of its citizens. The test is as to whether the State, in practical terms, provides adequate protection, in general, in relation to the type of persecution feared. Just as the fact that a State will not be absolved from its obligation to provide such practical protection by having laws which, for whatever reason, are not enforced in practice, similarly a State will not be found to have failed to provide adequate protection because it can be shown that some incidences of the violation concerned have occurred. This latter will be particularly so where it would appear that adequate and appropriate State measures have been taken to deal with such situations or instances as arise.

3.8 For the above reasons it seems to me that the basis of the challenge in this case is not founded upon the *Horvath* principle but is based on the more traditional judicial review issue as to whether there was any evidence from which the RAT could properly have concluded that State protection was available. If the RAT came to a sustainable view that such State protection was available then there can be no doubt but that the overall challenge must fail. The only issue which, therefore, it seems to me arises on the facts of this case is as to whether it can properly be said that there was sufficient evidence available to sustain the decision of the RAT as to State protection.

4. Application to facts of this case
4.1 Counsel for the respondents' draws attention to the fact that there was amongst the papers before the RAT a document headed "*Womensrightswatch – Nigeria: Report on Riots in Kaduna*". That information is relevant in that the riots in Kaduna to which the report relates were the riots connected with the Miss World contest and were therefore concerned with one of the two matters put forward by Prince Evuarherhe as the basis for his well founded fear of persecution on the basis of being a Christian pastor. There is no doubt from what is set out in that document that serious rioting did take place and that Christians were, in the course of that rioting, targeted. However, it is equally clear that events were brought under control as a result of a significant action on the part of security forces. The report indicates the following:-

> "There was a dusk to dawn curfew for two days to put things under control."

4.2 On the basis of that information it seems to me that there was ample evidence to enable the RAT member concerned to conclude, as he did, that the riots were quelled after a few days. Some criticism is made of the fact that the decision of the RAT refers to the riots having been quelled by "police" while the country of origin information is not specific as to the precise force which brought matters under control. Such a distinction does not appear to me to be material. The Tribunal Member went on to note that police protection was available. This is consistent with Prince Evuarherhe's own account in which he indicated that he spent a significant period after the riots in a secure location, protected by security forces.

4.3 Insofar as the findings of the RAT in respect of the Miss World contest riots are concerned I have, therefore, come to the view that there was ample country of origin information available to the RAT to enable the member concerned to come to the conclusions

which he did.

4.4 The second reference to police protection is somewhat more problematic. As noted above the second basis for the contention that a well founded fear of persecution exists stems from an alleged fear of persecution from Prince Evuarherhe's father's tribe. Under that heading the Tribunal Member concerned concludes with the sentence "in any event, I take the view that State protection would be available to him should he be subjected to any ill treatment by his father". No country of origin information dealing specifically with this aspect of police protection was, apparently, before the RAT. However, it is clear from a reading of point three of the reasons given by the RAT member concerned that the question of State protection merely confirmed a view which he had already taken on the issue of fear stemming from the applicant's father's tribe. This is shown by the fact that the sentence concerning State protection is preceded by the phrase "in any event". It seems clear that the same decision would have been reached even if the question of State protection had not arisen.

4.5 Therefore I am satisfied that the proper construction to place upon ground 3, as relied on by the RAT, was that the member concerned would, in any event, have been satisfied to place reliance upon that ground for the reasons, independent of State protection, specified. Those reasons were based on materials which were properly before the Tribunal and there is no basis, therefore, for taking the view that the Tribunal Member was not entitled to come to the view which he did.

4.6 I am not, therefore, satisfied that State protection materially affected the reasoning in ground 3. State protection obviously materially affected the reasoning in respect of ground 1 but for the reasons which I have set out above, I am satisfied that there was adequate evidence before the Tribunal Member concerned to reach the conclusions which he did in respect of State protection in relation to ground 1.

4.7 I am not, therefore, satisfied that it has been established that there was no evidence to support the findings of the RAT in this case insofar as any of those findings were material to or influenced in a significant manner, the overall conclusion reached.

5. The Test

5.1 While the matter was only touched upon in the hearing before me I have given some consideration to the proper test to be applied in reviewing a decision of the RAT in a matter such as this. There have been a number of decisions at leave stage where this court has been satisfied that there are substantial grounds for arguing that a more rigorous test than that traditionally applied in judicial review, may be appropriate when the court is scrutinising decisions which may affect fundamental human rights. (See for example *Gashi v. Minister for Justice Equality and Law Reform* (Unreported, High Court, Clarke J. 3rd December, 2004)). As this is a substantive, rather than a leave, hearing it would be inappropriate to express any concluded view on that issue without full argument.

5.2 However, it seems to me that, even on the basis of a higher level of scrutiny, the applicant's case in these proceedings would also fail. Therefore it does not appear to me that it would, in any event, have been appropriate in this case to address the undoubtedly important question of the appropriate in this case level of scrutiny to be applied by the courts to immigration cases (and other cases involving fundamental human rights).

For all of the above reasons I would refuse the relief sought.