R v SECRETARY OF STATE FOR THE HOME DEPARTMENT EX PARTE DEMIRAJ AND ETHEMI

Queen's Bench Division: Collins J
5 December 1997/29 January 1998[1]*
Asylum - 'safe third country' - Ethnic Albanians from Kosovo, Federal Republic of Yugoslavia - Whether Secretary of State entitled to issue certificates under s 2 of the Asylum and Immigration Act 1996 for removal of asylum-seekers to Germany - Standard of proof in Germany for establishment asylum claim - Extent to which signatories may differ in interpretation of United Nations Convention relating to the Status of Refugees 1951 and 1967 Protocol - Dublin Convention 1990 - Asylum and Immigration Act 1996, s 2 - Statement of Changes in Immigration Rules (HC 395), para 345
The applicants were ethnic Albanians from Kosovo in the Federal Republic of Yugoslavia who had left Kosovo in late 1996 and gone to Germany where they claimed asylum and were refused that year. They then travelled to the UK and claimed asylum. On 28 December 1996 the Secretary of State concluded that Germany was a 'safe third country' which had accepted that it was the responsible State under the Dublin Convention 19901[2] for examining the applicants' claims for asylum and accordingly, issued certificates under s 2 of the Asylum and Immigration Act 1996 directing that the applicants be removed to Germany without substantive consideration of their claims for asylum. The applicants applied for judicial review of the Secretary of State's decisions, arguing that: (a) as they had already been refused asylum in Germany, return to that country would result in their indirect removal to the Federal Republic of Yugoslavia; (b) they would be entitled to refugee status in the UK, pursuant to the decision in *Gashi and Nikshiqi v Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening*).2[3] If their claims were to Germany to satisfy the refugee definition in Art 1A(2) of the United Nations Convention relating to the Status of Refugees 1951 was that of a 'clear' or 'considerable' probability of persecution and that this was higher than that required under the true interpretation of the 1951 Convention. Both the applicants and the respondent produced and relied upon expert opinions from German lawyers which, in the case of the Secretary of State, was only sought by him after a request for an adjournment was granted on 17 October 1997.
Held - dismissing the applications -
(1)Although it would be desirable for a universally correct approach to the resolution of the question of whether an asylum-seeker establishes a claim for asylum under the 1951 Convention, in the absence of some international agreement, no such approach existed. Signatories to the 1951 Convention could. Therefore, properly differ in the way in which they required asylum-seekers to establish their claim for refugee status.
(2)The Secretary of State was entitled to take the view that for many Albanians in Kosovo, the risk was one of discrimination and harassment rather than persecution; such a view was not *Wendnesbury* unreasonable. The fact, therefore, that the applicant's claims had already been rejected in Germany did not of itself mean that the Secretary of State could not reasonably issue the certificates under s 2 of the 1996 Act.
R v Secretary of the State of the Home Department and Immigration Officer, Waterloo International Station ex parte Canbolat followed.

(3)In reviewing whether the Secretary of State's decision to remove the applicants to Germany was unlawful, the court had to consider whether any difference in the construction of the 1951 Convention between Germany and the UK meant that the Secretary of State could not properly be satisfied that were was no real risk that the applicants would be returned to the Federal Republic of Yugoslavia by Germany otherwise than in accordance with the 1951 Convention. The issue was, therefore, whether the interpretation of the 1951 Convention applied by German law was reasonable having regard to its language and purpose. Accordingly, as the Secretary of State's view of Germany's application of the 1951 Convention was supported by the expert opinion of an eminent German lawyer, it could not, despite the contrary view expressed by the applicant's experts, be said that the Secretary of State's decision was irrational. The Secretary of State was entitled to conclude that all the prerequisites to the issuing of certificates under s 2 of the 1996 Act were fulfilled.

R v A Special Adjudicator ex parte Kerrouche followed.

(4)The Secretary of State was not under a duty to carry out full inquiries of asylum-seekers for the purposes of making a decision under s 2 of 1996 Act. Unless a specific matter was raised which suggested some error, the Secretary of State was entitled to rely upon his knowledge of the usual practices of the government in question. However, as the right of appeal provided by the 1996 Act was meaningless because it could only be exercised from abroad, the Secretary of State would no doubt adopt a flexible approach to reconsidering an adverse decision if relevant material was put before him.

Statutory provisions considered

Asylum and Immigration Act 1996, s 2 (1), (2)

Immigration Rule referred to in judgment

Statement of Changes in Immigration Rules (HC 395), para 345

International Treaties, Conventions and documents referred to in judgment

United Nations Convention Relating to the Status of Refugees 1951 and 1967 Protocol

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities 1990, Art 3 (5)

Cases referred to in judgment

Gashi and Nikshiqi v Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening) [1997] INLR 96, IAT

R v a Special Adjudicator ex parte Kerrouche [1998] INLR 88. CA

R v Secretary of State for the Home Department and Immigration Officer, Waterloo International Station ex parte Canbolat [1997] INLR 198, CA

R v Secretary of State for the Home Department and Special Adjudicators ex parte Chiper and Others [1995] Imm AR 410, QBD

R v Secretary of State for the Home Department ex parte Sivakumaran [1988] 1 AC 958, [1988] 2 WLR 92, [1988] 1 ALL ER 193, [1988] Imm AR 147, HL

International case referred to in judgment

Immigration and Naturalization Service v Cardozo-Fonseca (1986) 480 US 421, US Sup Ct.

Mr M. Gill and Ms U. Miskziel for the applicants

Mr N. Pleming OC and Ms L. Giovannetti for the respondent

COLLINS J: Each of the applicants, whose cases have been heard together, is an ethinic Albanian who lived in Kosovo province in the Federal Republic of Yugoslavia. Each left Kosovo and went to Germany, Mr Demiraj in October 1996 and Mr Ethemi in November 1996. Each claimed asylum in Germany, asserting that he had a well-founded fear of persecution on the ground of his ethnicity, and was grated a temporary residence permit while his claim was investigated. When the applicants came before me on 16 October 1997 it was assumed that the claims in Germany had not been finally determined. Certainly, the respondent seems to have made no specific inquiries of the German authorities. For this and other reasons, the applications were adjourned and came back before me on 5 December 1997. It now appears that Mr Demiraj claimed asylum 29 October 1996 and that his claim was refused on 31 October 1996. Mr Ethemi made his claim on 21 November 1996; it was refused on 25 November 1996. Each lodged an appeal against the refusal and was given one month to submit representations. Neither made any representations and so each applicant's appeal has been dismissed since his arrival in the UK. Thus the position is that each applicant has had his claim in Germany rejected and cannot (in the absence of any fresh material) reopen it.

The basis of the applicant's cases is that they are entitled to asylum because they are ethnic Albanians from Kosovo and, as such, have a well-founded fear of persecution. Accordingly, they have through their solicitors refused to permit the German authorities to disclose to the respondent the grounds upon which they claimed asylum. When they arrived in this country, there was a very brief interview because, since it was apparent that they had applied for asylum in Germany, the respondent had to consider whether to return them to Germany which was regarded as a safe country. The respondent was applying para 345 of HC 395 which reads:

"If the Secretary of State is satisfied that there is a safe country of which an asylum applicant can be sent his application will normally be refused without substantive consideration of his claim to refugee status. A safe country is one in which the life or freedom of the asylum

applicant would not be threatened (within the meaning of Article 33 of the [Geneva] Convention) ad the government of which would not send the applicant elsewhere in a manner contrary to the principles of the Convention and Protocol.'

Section 2(1) of the Asylum and Immigration Appeals Act 1996 enables the Secretary of State to certify that in his opinion the conditions mentioned in subsection (2). Are fulfilled whereupon the applicant can be removed to a third country. The conditions in s 2(2) are:
(a)that the person is not a national or citizen of the country to which he is to sent;

(b)that his life and liberty would not be threatened in that country by reason of his race, religion, nationality, membership of a particular social group or political opinion; and

(c)that the government of that country would not send him to another country or territory otherwise than in accordance with the Convention.'

These provisions reflect, so far as the European Union is concerned, the Dublin Convention, Art 3.5 of this reads:
Any Member State shall retain the right, pursuant to national laws, to send an applicant for asylum to a third state, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.'

What lies behind all these provisions is the intent that an asylum-seeker should have his claim considered in the first safe he reaches on leaving the country or territory in which he fears persecution. There is no question here but that each applicant did claim asylum in Germany, which is a signatory to the Geneva Convention. Thus the conditions of para 345 of the rule and of s 2 of the 1996 Act were fulfilled if Germany would not send either applicant back to Yugoslavia otherwise than in accordance with the Convention.
On 28 December 1996 the respondent issued the relevant certificates under s 2 of the 1996 Act. There is a right of appeal against such a certificate, but it is only exercisable from outside the UK. It is, as has been pointed out in other cases, a singularly worthless right if the applicant has nowhere to go other than the so-called safe country and his contention is that the Secretary of State was wrong to certify because the country is not in truth safe. In those circumstances, it has rightly not been suggested that there is an alternative remedy in the form of an appeal which should preclude judicial review.
On 4 January 1997 these applications were lodged and on 17 January 1997 Harrison J granted leave to move and ordered expedition. In a letter of 4 January 1997 the applicant's solicitor had said:
Briefly, the grounds we will be relying upon are based on the premise that Germany cannot be regarded as a safe third country to which Kosovan Albanian asylum-seekers can be returned and we refer the Secretary of State [to] the agreement between Germany and the Federal Republic of Yugoslavia which provides for the forcible return to Yugoslavia of such asylum-seekers.

It is submitted that the repressive treatment of ethnic Albanians from Kosovo is well known and extensively documented by the United Nations and the international community who acknowledge that ethnic Albanians have a fear of persecution per se and that this fear is objectively well founded and based on the treatment there is a serious possibility they may receive.'

In a letter which is wrongly dated 7 November 1996 (I am told it may have been 7 January 1997) the Secretary of State expanded n his reasons for certifying under s 2 and purported to deal with the grounds for judicial review. In essence, he said that he was satisfied that Germany did and would abide by its international obligations and that he was satisfied that asylum applications from nationals of the former Republic of Yugoslavia are given full and careful consideration by the German authorities before any decision to return the applicants to their country of origin is taken'. He went on:
He is aware of no substantive evidence that the German authorities act in breach of Germany's international obligations in this respect.'

It is no suggested and certainly there is no evidence to support any contention that Germany's procedures are in any way deficient. The applicant's claims were considered on their merits and were rejected. There was a right of appeal, which was initially pursued but not completed since the applicants choose to come to the UK because, to quote Mr Ethermi in his interview, I was told there are better asylum conditions in England and the people are nicer than in France or Germany'. What is said is that the German interpretation of the Convention is too restrictive in that far too heavy a burden is placed on the asylum-seeker to prove his claim. The standard of proof required is, it is said, too high and so Germany is in breach of the Convention. There is some academic support for this view. It seems that the German approach is to require an objective establishment that persecution is likely, the subjective fear of the applicant being irrelevant. The standard set is expressed in German in the world beachtliche Wahrscheinlichkeit', which are translated as considerable probability' or clear probability'. The applicants obtained an opinion from Dr Reinhard Marx, a specialist in asylum law. He asserts that the high standard of clear probability' has resulted in the very low rate of recognition of the validity of asylum claims by Kosovan Albanians. This objective standard is, he says, inconsistent with the standard required by the Convention: see article in *International Journal of Refugee Law*, vol 4 no 2 (1992) at pp 151-170.
Since it seemed there might be some divergence of view about the position in German law and that the resolution of that question might be important, the respondent wanted to explore that matter further and obtain his own advice. That was another reason for the adjournment in October 1997. There was also an issue as to the significance of some statistics presented showing the apparently very small number of successful asylum claims in Germany by nationals of the Federal Republic of Yugoslavia. The respondent obtained an opinion from Professor Kay Hailbrunner of the University of Konstanz. He asserts that the German approach is indeed to apply an objective evaluation, but he used to exclude claims for political asylum based on a mere possibility as well as claims which are based on purely subjective assumption of fear'. His report has confirmed the respondent's view that the German authorities to not require asylum applicants to prove that there is a greater than 50% likelihood of persecution'.
The applicants have presented before me a quantity of material which shows how ethnic Albanians from Kosovo are mistreated by the government, that is to say, by the Serbs who are in charge. That material has persuaded the Immigration Appeal Tribunal to decide that ethnic Albanians have a well-founded fear to persecution in Kosovo and so are entitled to asylum here: see *Gashi and Nikshiqi v Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening)* [1997] INLR 96. In the course of a lengthy and closely reasoned decision, the IAT said this (at 104A-B):
The preponderance of evidence laid before us, reveals a claim to policy of ethnic cleansing against Albanians by Serbs. It is carried out by a system of general as well as random brutality against Albanians in the form of restrictions in employment, random call-up for military services of young Albanian males and a packing of the senior administration and judiciary with non-Albanians. All against a background of Kosovo being a traditional Albanian Enclave.'

And at 117D-E, the IAT says:
We have heard and seen a considerable body of evidence concerning the policies of the government in the F[ederal] R[epublic] of Y[ugoslavia] with regard to ethnic Albanians and their treatment. We are satisfied from the evidence that the Serbian Government in Belgrade does have a system or policy which targets ethnic Albanians and is directed in the long term to their complete removal: "ethnic cleansing" is the euphemistic term applying to this evil. The fact that the actual chance of an ordinary Albanian being individually targeted or singled enough and both Albanians is serious enough and both extensive and sustained [sic]. Given the background policy of the Serbian Government one can readily conclude that the chance of risk to any ethnic Albanian is sufficient to raise it to the level of a serious possibility. In our view the evidence laid before us admits of no other reasonable conclusion at least on the criteria to establish it in asylum claims.'

The Secretary of State did not seek to appeal this decision. Assuming a correct self-direction in law, he could not have done since an appeal lies only on a point of law. The respondent

accepts, as he has to, that the result of this decision is that, unless he can produce fresh evidence which may tend to contradict the IAT's decision, he must accept that all ethnic Albanians face a serious possibility of persecution in Kosovo. In these circumstances, all ethnic Albanian asylum-seekers have been permitted to remain in the UK. Accordingly, submits Mr Gill on behalf of the applicants, they would have been granted asylum. It follows, he says, that to return them to Germany when it is known that their asylum claims have been refused would be to act contrary to the Convention since they would be indirectly returned to the country in which they feared persecution.

The argument was forcefully and attractively presented. But its validity must depend upon the assumption that the UK approach to the burden of proof and, more particularly, the conclusions reached by the IAT in Gashi should prevail as the only reasonable construction of the relevant provisions of the Convention. Mr Gill went so far as to submit that I should decide what the true construction of the Convention was and that my decision should (subject, no doubt, to appeals to higher courts) be determinative. I cannot accept this argument. There is no universally accepted correct approach to the resolution of the question whether an asylum-seeker establishes his claim under the Convention. No doubt it would be desirable if there were but, in the absence of some international agreement, there cannot be. In any event, a universally accepted approach would not necessarily lead to identical conclusions on factual issues. Thus it would, as it seems to me, have been open to the Tribunal which decided *Gashi* to have concluded rationally that ethnic Albanians as such had a well-founded fear of harassment and discrimination which stopped short of persecution. Mr Johnson, who has made affirmations on behalf of the respondent, has asserted that the respondent in Kosovo, the risk is one of discrimination and harassment rather than persecution'. I see no reason to doubt that the respondent is entitled to take that view.

Thus I am satisfied that the fact that the German authorities and courts have rejected the applicants' claims for asylum does not itself mean that the respondent cannot certify in accordance with s 2 of the 1996 Act. The respondent had to satisfied that the German Government would not send them to Yugoslavia otherwise than in accordance with the Convention. This means, as the Court of Appeal decided in *R v Secretary of State for the Home Department and Immigration Officer, Waterloo International Station ex parte Canbolat* [1997] INLR 198, that he must be satisfied that Germany provides a system which will, if it operates as intended, provide the required standard of protection for an asylum-seeker. There must be no real risk that the asylum-seeker would be sent to another country otherwise than in accordance with the Convention: see per Lord Woolf MR giving the judgment of the court at 207.

Subject to the burden of proof argument, there is no criticism of the German procedures nor is it contended that those procedures were not correctly applied to the applicants' claims. The question therefore resolves itself to whether any difference in the construction of the Convention means that the respondent cannot properly be satisfied that there is no real risk that the applicants would be returned to Yugoslavia otherwise than in accordance with the Convention. The English approach is clearly set out by the House of Lords *in R v Secretary of State for the Home Department ex parte Sivakumaran* [1988] 1 AC 958. While their Lordships through Lord Keith accepted that there is a subjective element involved in that there must exist a fear of persecution, the determination whether that fear is well founded must depend on an objective test. In reality, the two elements cannot be entirely separated since the absence of any objective basis for the alleged fear may entitle the Secretary of State decide that it does not exist and that the claim is a bogus one. But there may be perfectly genuine fear which may not be well founded when tested against objective criteria. In those circumstances, I do not think it necessarily follows that, if German law applies a purely objective test, it in reality is differing from the English approach. In this regard, the language of the court in *Canbolat* at 207B is instructive: "In *Sivakumaran* the "reasonable degree of likelihood" test was laid down as an objective standard which an applicant for asylum status had to demonstrate in order to obtain this protection."

In formulating the "reasonable degree of likelihood' test, Lord Keith referred to and appeared generally to approve the approach of the US supreme Court in *Immigration and Naturalization Service v Cardozo-Fonseca* (1986) 480 US 421. In that case, Stevens J, giving the judgment of

the majority, rejected the argument that the asylum-seeker had to show that it was more probable than not that he would suffer persecution. At 439, he said this:
'The High Commissioner's analysis of the United Nations' standard is consistent with our own examination of the origins of the Protocol's definition, as well as the conclusions of many scholars who have studied the matter. There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10% chance of being short, tortured, or otherwise persecuted, that he or she had no "well-founded fear" of the event happening. As we pointed out in *Stevic*, a moderate interpretation of the "well founded fear' standard would indicate "that so lone as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but is enough that persecution is a reasonable possibility": 467 US at 424-5.'

It is to be noted that Lord Keith did not use the words 'reasonable possibility' in formulating his test. The change of language was surely deliberate and it seems to me that a 'reasonable degree of likelihood' is and was intended to be a slightly more restrictive test than that applied by the US Supreme Court in *Cardozo-Fonseca* (even though Lord Keith seems to equate it to 'a serious possibility': see 995B). this underlines the point that there is no universally approved test and that the various signatories may properly differ in the way in which they require an asylum-seeker to establish his claim
This brings me to a recent decision of the Court of Appeal in *R v A Special Adjudicator ex parte Kerrouche* [1998] INLR 88 which Mr Pleming QC on behalf on the respondent particularly relies. That case involved the question whether an Algerian alleged terrorist had committed a political crime and so was concerned with a different Article of the Convention. For that reason, Mr Gill submits it is distinguishable: in any event, he says, the observations upon which Mr Pleming particularly relies are other. At 93A-F, Lord Woolf MR said this:
'Mr Nichol submits that because the decision to return the appellant is being made by this country, if an interpretation is adopted by a third country which is more restrictive than that which is adopted in this country, then that is not a safe country to which the applicant for asylum can be returned. This is not the position. The difference in an approach to the interpretation of the Convention and Protocol has to be of such significance that it can be said that in making a decision affecting the position of a particular applicant for asylum, the third country would not be applying the principles of the Convention. For this to be the position, the third Country's approach would have to be outside the range of tolerance which one signatory country, as a matter of comity, is expected to extend to another. While is highly desirable that there should be a harmonised approach to the interpretation of international documents such as the Convention, until that harmonisation is achieved, one signatory must allow another signatory a margin of appreciation before treating that other country as being one which did not fulfil its obligations to adhere to the principles of the Convention.

Mr Nichol submitted that his approach did not involve criticising the approach of the third country. It was sufficient for his purposes merely to satisfy the court that the French approach was one which was more restrictive so far as the appellant is concerned than the approach which would be adopted here. However, the consequence of this approach would be to make the ability of the Secretary of State to remove to a safe country much less effective than the Convention intended it to be. It would require the Secretary of State and special adjudicators to become deeply involved in a comparative analysis of the law of the different signatories to the Convention. In *R v Secretary of State for the Home Department and Special Adjudicators ex parte Chiper and Others* [1995] Imm AR 410 Collins J in my judgment rightly indicated that there is no obligation upon the country's authorities to investigate the details of the hearing before the relevant foreign tribunal for the purposes of r 347. It was appropriate to take a broad approach and it would be sufficient if there had been an adherence to an English court's view of substantial justice. In my judgment a comparable approach should be taken to the differences in interpretation of the Convention between that which would be adopted by English courts and that which would be adopted in the "safe country". Unless the interpretation adopted by the "safe country" was sufficiently different from that in English law to be outside the range of possible interpretations the difference need not concern the authorities in this country.'

Whether or not those observations are to be categorised as obiter dicta or part of the ratio decidendi, I consider that I should follow them. I am happy to do so because I entirely agree with them. Furthermore, they seem to me to apply to the approach to the construction of the Convention generally and are wholly consistent with the way in which the House of Lords in *Sivakumaran* dealt with *Cardozo-Fonseca*.

In order to decide whether the German approach is 'sufficiently different from that in English law to be outside the range of possible interpretation', Mr Gill submits that I must decide what German law in fact requires. I am not sure, with the greatest respect to the Court of Appeal, that it is necessarily correct to adopt English law as the paradigm. The question must surely be whether the interpretation of the Convention applied by German law is reasonable having regard to its language and purpose. All signatories accept that the asylum-seeker must establish his claim and show that he has a well-founded fear. It is also generally accepted that the test whether the fear is well founded must be based on objective facts. Thus the essential difference between various signatories is likely to be in the standard of proof required.

Even if Germany does apply a 'more probable than not' test, it is no means clear to me that would be an unreasonable construction of the Convention. But it is not necessary to go that far. I am concerned with the propriety of the respondent's certificates pursuant to s 2 of the 1996 Act.

I can only quash his decisions if satisfied they were unlawful. In the context of this case, that must mean irrational in the *Wednesbury* sense. He has obtained the opinion of an eminent German lawyer in the shape of Professor Hailbronner. Dr Marx disagrees with him. It is not in my judgment necessary for me to decide who is correct and for that reason I did not grant a further adjournment so that issue could be investigate more fully. The respondent is in my judgment entitled to act on the basis of advice given to him by a respectable ad respected lawyer and so was entitled to maintain his decision in the light of Professor Hailbronner's opinion. I bear in mind, too, the evidence of Mr Johston in his first affidavit as follows:

'(4)The Secretary of State is aware that Germany is a signatory to the Convention and the 1967 New York Protocol Relating to the Status of refugees, it has reaffirmed its commitment to abide by its international obligations in a number of other international agreements, including the 1995 Brussels Draft Resolution on Minimum Guarantees for Asylum Procedures.

(5)Germany is a highly developed Western European country with a long track record of providing protection to refugees, an its recognition rate, at 9%, compares favourably with that in many other European countries. One of the sources of the Secretary of States assessment of German laws and procedures is the chapter on Germany in the "Summary Description of Asylum Procedures in States in Europe, North America and Australia". This document is published by the Secretariat of the Inter Governmental Consultations on Asylum, Refugee and Migration Policies and outlines the laws and procedures of those States.

(6)The Secretary of State is satisfied that German laws and procedures properly provide for dealing with asylum applicants within the requirements of the Convention, and that these procedures are applied in practice. He is aware to no substantive evidence that German authorities act in breach of these laws and procedures. On the contrary, the Secretary of State is not aware of a single instance where a special adjudicator has expressed concern about the standard of consideration in substantive asylum cases in Germany.'

It seems to me that the respondent was entitled to form the opinion that all the prerequisites to the issuing of certificates under s 2 of the 1996 Act existed.

Parliament in enacting s 2 has clearly intended that applicants for asylum should be returned to safe countries if application could have been made there. In ratifying the Dublin Convention, the Government has adopted the policy that applications should normally be made to the first safe country reached by the asylum-seeker.

The signatories to the Dublin Convention, themselves signatories to the Geneva Convention, clearly see no conflict between the two. Nor, once one recognises that differences in approach are permissible, could the fact that one country might allow and another refuse an identical claim create such a conflict.

It was submitted that there was a duty on the respondent to make full inquiries of asylum-seekers such as the applicants. It was not enough to assume that the relevant foreign

government would carry out or had carried out a proper procedure in determining a claim. I do not agree. Unless a specific matter is raised which suggests some error, the respondent is in my view entitled to rely on his knowledge of the usual practices of the government in question. He is entitled to apply s 2 in an appropriate case unless some material is put before him which requires him to make further inquiries. Since the right of appeal is virtually meaningless, no doubt he will adopt a reasonably flexible approach to reconsidering an adverse decision if relevant material is put before him by, for example, legal advisers who are consulted after if has been made.

For those reasons, I must dismiss these applications.

*Applications dismissed. No order for costs. Leave to appeal granted.*3[4]

Solicitors: *Sri Kanth & Co* for the applicants

Treasury Solicitor

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[1]* [Ed] The case was reported in [1998] Imm AR 147 with decision date 5 December 1997, and in [1998] INLR 451 with decision date 29 January 1998.

[2] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities 1990. The Dublin Convention came into force on 1 September 1997.

[3] [1997] INLR 96.

[4] On 9 March 1998 the appeal from this decision came before the Court of Appeal (Lord Woolf MR, Simon Brown and Henry LLJ). Shortly before the hearing of the appeal the Secretary of State decided not to remove the applicants to Germany. The Master of the Rolls stated:

'Having hear the submissions from Mr Gill and Mr Pannick in relation to this appeal, as the Secretary of State has indicated, as far as the appellants are concerned, that it is proposing not to act on his order to return the applicants to Germany, we have come to the conclusion it would not be helpful to go into the merits of the appeal.

We feel that this is very much a changing situation where any judgment which we have would not help the administration of justice in this difficult area in which the Secretary of State is the body responsible for fulfilling his duties, both under the Convention and under domestic legislation.

Accordingly, we will make no order on the appeal, save that three should be legal and taxation of the appellants' costs.'

On 8 June 1998 Sedley J granted leave to mover for judicial review with the consent of the Secretary of State in *R v Secretary of State for the Home Department ex parte Besnik Gashi*, a new case involving removal of Kosovants to Germany. On 10 June 1998 the Court of Appeal gave judgment in *R v Secretary of State for the Home Department ex parte Iyadurai* [1998] INLR 472 and considered the standard of proof' argument.