Case No: Preliminary Points

Neutral Citation Number: [2008] EWCA Civ 726
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: Tuesday, 10th June 2008

Before:

LORD JUSTICE SEDLEY
LORD JUSTICE LONGMORE
and
LORD JUSTICE MOSES

- -

Between:

KH (SUDAN) & ORS **Appellants**

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

- -

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THE APPELLANTS WERE REPRESENTED BY THEIR VARIOUS COUNSEL.
Ms L Giovanetti and Mr R Dunlop (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Sedley:

1. We have begun the hearing of these 16 listed appeals and applications for permission to appeal by hearing counsel (we are grateful to them for having been selective and sparing as to how many of them addressed us) on what appeared to us to be the only two points either common to more than one case or, in one instance, capable of affecting all the cases if the point was well taken. Our conclusion follows. It will in due course be reflected in a fully reasoned judgment in due course which will form part of the decisions to be given in the 16 cases.

2. The decision of their Lordships' House in AH (Sudan) v SSHD [2007] UKHL 49 has neither expressly nor impliedly undermined the Country Guidance contained in HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062. Baroness Hale's concurring speech in AH stresses what is uncontroversial, that no Country Guidance case is for ever; it is a factual precedent, as Laws LJ has aptly called it, and as such is open to revision in the light of new facts -- new either in the sense of being newly ascertained or in the sense that they have arisen only since the decision was promulgated -- provided in each case that they are facts of sufficient weight.

3. HGMO can be seen to set out without demur evidence from credible sources, some of it instanced by this court in paragraph 43 of its decision in AH (Sudan) v SSHD [2007] EWCA Civ 297, which in any one case may legitimately re-enter the fact-finding process if the data warrant it, notwithstanding the summary generic findings arrived at in paragraph 309 of HGMO.

4. We have had our attention drawn to the arguably discrepant formulations in paragraph 4 of the headnote and paragraph 309(6) of the text from HGMO. It is of course the latter which is part of the actual determination. It is to be read and understood in the light of the findings which precede it and which it seeks to summarise, and in the light also, so far as it was accepted by the AIT, of the evidence on which these findings are based. As the AIT itself said in paragraph 266 of HGMO:

> "our firm view is that asylum claims or Article 3 claims submitted by non-Arab Darfuris faced with return to Khartoum should be considered on their individual merits."

5. Nor, in our judgment, is there anything impeachable about defining reasonable internal relocation as including any place which, provided of course it offers sufficient safety from persecution, is not unduly harsh for the individual concerned. We would not be entertaining the question but for the submissions made to us by Mr Bedford, founding himself on Article 8 of the Qualification Directive. This is captioned "Internal protection" and in paragraph 1 reads:

> "As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country."

6. As is well-known, the House of Lords in Januzi v SSHD [2006] UKHL 5 interpreted this as requiring it to be unduly harsh to expect the appellant to relocate in the particular safe place if it was to be said to be unreasonable for him or her to do so. There is no logical problem in this extrapolation such as is capable, in our view, of even raising a question for the European Court of Justice. We do not accept Mr Bedford's submission that we can, much less should, refer to the ECJ the question whether the House of Lords have erred in adopting this meaning. It is not necessary to embark any further upon the constitutional questions involved in such an attempt to circumvent the House of Lords by going from this court to the European Court of Justice.

7. We propose, accordingly, to approach all the applications and appeals in our present list on the footing that internal relocation to a place of sufficient safety will be reasonable unless it is unduly harsh for the individual concerned, and that immigration judges are expected to follow the Country Guidance contained in HGMO unless acceptable evidence is placed before them by either party which shows it to have been incorrect or to be no longer correct in some significant respect.