High Court of Ireland Decisions

Judgment

Title:	M.A.H. -v- The International Protection Appeals Tribunal & ors
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[2017] IEHC 462

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 506 J.R.]

BETWEEN

M.A.H.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE

ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 17th day of July, 2017

1. This judgment is confined to so much of the applicant's application for leave as seeks a declaration that Regulation (EU) No. 604/2013 of the European Parliament and of the

Council of the 26th of June, 2013 is invalid.

2. This Regulation, known as Dublin III introduced a number of changes to the prior Regulation (No. 343/2003) both of which are for the purposes of establishing the criteria and mechanism for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a Stateless person.

3. The relevant criteria are set forth in Chapter 3 of Dublin III which sets out a hierarchy as to criteria to be applied in determining the Member State responsible. In the instant matter, the applicant had applied for asylum in the United Kingdom in 2009 and in Northern Ireland in 2014. He was refused on both occasions. On the 29th of August, 2016 the applicant who had arrived in the State applied for asylum here, however, on the 17th of November, 2016 ORAC notified the applicant that the UK was responsible under the Dublin III criteria. This notification was the subject matter of an appeal on the 1st of December, 2016 and following an oral hearing on the 30th of March, 2017 the first named respondent confirmed the Commissioners decision that the applicant's application for refugee status was one which would properly be examined in the UK pursuant to Dublin III, by decision of 11th May, 2017

4. The applicant's contention that Dublin III is invalid is based on the argument that it unlawfully removes a right to choose the country in which a given applicant might apply for asylum as provided for by the Geneva Convention of the 28th of July, 1951 and the Protocol on the 31st of January, 1967 (the Protocol involved removing geographical and temporal limits in the Convention)

5. The applicant refers to Article 31.2 of the 1951 Convention where it is stated:-

> "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

6. The applicant asserts that this provision provides a refugee or presumptive refugee with an element of choice as to which country he applies for asylum in and such person enjoys immunity from prosecution or punishment for example for entering a State with false documentation and further assets that nowhere in the Convention is it suggested that an applicant should be returned to a country of origin or to another country for any purpose.

7. In fact Article 33 provides no contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened for a Convention reason. No allegation of such a threat is made if the applicant is returned to the UK and there are no further provisions in the Convention prohibiting Contracting States from expelling or returning a person to a country without threat on any Convention ground.

8. The applicant argues that Dublin III flies in the face of the Geneva Convention and is forcing an applicant to make an application in a Member State where he does not wish to do so.

9. The applicant refers to the matter of *R. v. Secretary of State for the Home Department and another* [1999] 4 AER 520 (which involved a query as to the legality of prosecuting asylum seekers for criminal offences) and asserts that there is no suggestion that the absence of immunity would entitle a State to insist on an applicant

applying in a different country. It is noted that in that matter the Court considered Article 31(1) as providing that Contracting States shall not impose penalties for illegal entry or presence by refugees who have come directly from a territory where their life of freedom is threatened.

10. It is noted that the case now relied upon by the applicant refers to the refugees having some element of choice as to where they may claim asylum and a mere short-term stopover en route to their intended sanctuary will not forfeit the protection afforded. The judgment noted that Article 31(1) which requires refugees to present themselves without delay to the authorities does not require asylum seekers to claim asylum as soon as they arrive at passport control and refers to the presumptive applicant's intention to claim asylum within a short time. In my view, the element of choice afforded by the Geneva Convention as asserted by the applicant is unreasonably overstated. I am not satisfied that the case law referred to and relied upon by the applicant assists him in the manner suggested.

11. The instant applicant has already exercised a choice namely in his application for asylum in England in 2009 and again in Northern Ireland in 2014. These facts belie the suggestion by the applicant that by returning him to the UK he would be forced to make an application for asylum in a country which he does not wish to do so. Furthermore, it is noted from the documentation tendered by the applicant in the within matter to ORAC when he initially applied for asylum in this jurisdiction, the applicant in fact arrived in the UK on or about the 16th of December, 2006 and remained in the UK until 2011 when he travelled to Northern Ireland. He subsequently travelled to this State on the 29th of August, 2016. These facts in my view demonstrates that by the decision to return the applicant to the UK for further asylum assessment there is no argument to suggest that there is a breach of the Geneva Convention, given that the period of time for which the within applicant was in the UK could not possibly be considered to be a short-term stopover. The obligation on contracting States by virtue of Article 31.2 of the Convention requires the States to allow refugees a reasonably period and all necessary facilities to obtain admission into another country.

12. These is nothing in the factual profile of the applicant to suggest that when the within applicant arrived in the UK on the 16th of December, 2006 he was merely en route to Ireland for the purposes of seeking asylum. There was a period of almost ten years between the time when the applicant first arrived in the UK and when he subsequently arrived in this State.

13. The reasonable period and necessary facilities mentioned in the Convention are not in my view undermined by any stretch relative to the instant applicant so that he could validly argue that there had been a breach of the Convention by virtue of the application of Dublin III.

14. The applicant's application therefore for leave to apply for *certiorari* seeking a declaration that Dublin III is invalid is refused.