Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Witchcraft Persecution as Religious Persecution under the Refugee Convention - Ismaila Demba v SSHD [2015] UKUT 01405 (IAC)

Question(s) at stake:

Whether internal relocation was a viable alternative for the appellant, an asylum seeker from the Gambia who feared witchcraft persecution on the ground of religious beliefs.

Outcome of the ruling:

The appellant had, like his father, been persecuted for his religious beliefs by the police: the Upper Tribunal therefore ruled that no viable internal relocation alternative existed for him.

Topic(s):

- Immigration and Asylum

Keywords:

- Failure of State protection
- Grounds/Reasons of persecution
- Internal relocation alternative
- Religion and belief

Tag(s):

- Witchcraft

Author(s):

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Country:

United Kingdom

Official citation:

Ismaila Demba v SSHD [2015] UKUT 01405 (IAC)

Link to the decision:

No link available.

ECLI:

No ECLI number / ECLI number unknown

Date:

25 August 2015

Jurisdiction / Court / Chamber:

Upper Tribunal – Asylum and Immigration Chamber

Remedy / Procedural stage:

Appeal

Previous stages:

- Permission to appeal to the Upper Tribunal (not publicly available)
- First Tier Tribunal (not publicly available)
- Home Office (not publicly available)

Subsequent stages:

None

Branches / Areas of law:

Asylum and Immigration

Facts:

The appellant, a citizen of the Gambia, came to the UK as a visitor in March 2004, with the goal of meeting his girlfriend, “whom he had met in” his country. (para. 2) “While he was in” the UK, he was informed that his father had died. (ibid.) He claimed that his father’s death was a killing, and that the motive for this killing was rooted in a witchcraft accusation that had been “made against his family.” (ibid.) Furthermore, the appellant’s mother, “brother, and sisters” all disappeared around this time. At the time of the ruling, their whereabouts were unknown to the appellant. (para. 4) Therefore, the appellant claimed, he feared for his own life. For this reason he applied for asylum. (para. 2)

The appellant stated that “his mother’s family were reputed to be witches and the suspicion of witchcraft fell upon the appellant from birth”. (para. 3) Not only had the appellant been ill-treated and harassed by local villagers on several occasions, he had also been arrested and detained by the Gambian police. While in detention, he was beaten. (ibid.) He still bears scars resulting from beatings that he endured while in detention. (ibid.)

Although the appellant’s credibility was disputed before the First-tier Tribunal, the Tribunal did accept as credible the appellant’s account of the witchcraft suspicions under which his family were living, the mistreatment he had received, and his experience of police brutality. (para. 5) “The appellant’s account was consistent with the background information” provided to the tribunal (ibid.): this evidence corroborated the claim that the “reason the appellant was mistreated by the police after he was arrested was because the President of the country is against witchcraft.” (para. 3)

Additionally, the appellant’s scars were discussed in the “medical report which stated that they were consistent with the history of assaults”. (para. 5)

Protection in the Gambia, the representative of the Home Office argued before the First-tier Tribunal, was sufficient for the appellant’s needs. (para. 6) The First-tier Tribunal considered background information that suggested that, in that country, there existed “an avenue for complaints against the police and that

there had been some disciplinary action against the police." (ibid.) It concluded that it "was not satisfied that it would be unreasonable or unduly harsh for the appellant to relocate within [the] Gambia. He was a young and healthy man who had managed to leave [the] Gambia on his own passport, relocate to the UK and stay here for 8 years. The judge found that internal relocation would be a reasonable and viable alternative to seeking international protection." (para. 7)

"In the application for permission to appeal, it was argued that the judge had erred in law in considering internal relocation" a viable option for the appellant. (para. 8)

In response, the appellant argued that "The persecution in this case emanated from the state and the state's attitude towards the appellant's father precluded the conclusion that the persecution the appellant experienced was either committed by rogue officers or was a one-off event. Reference was also made to the size of Gambia and to the decision of the House of Lords in Januzi [2006] UKHL 5." (ibid.)

"Permission to appeal was granted on the basis that the judge made arguable errors of law in her reasoning in respect of internal relocation." (para. 10)

Ruling:

The Upper Tribunal ruled that the First-tier Tribunal had failed to provide "adequate reasons for finding that" the appellant enjoyed a viable internal relocation alternative in the Gambia. (para. 24)

In particular, the First-tier Tribunal had failed to "take sufficiently into account that the appellant had been persecuted, as was his father, by the police, who are agents of the state." (ibid.)

Country information for the the Gambia (on which the Upper Tribunal had relied) detailed "the behaviour of the police in" that country "and their lack of accountability." (ibid.) Not only had the appellant been arrested and beaten "because of his alleged involvement with witchcraft" (para. 19), but it was the case that the police officers who arrested and beat him were not

unrepresentative “rogue police officers.” (para. 24) Furthermore, it found that the persecution to which the appellant and his father had been subjected was not a matter of unusual or isolated “one-off” events. (ibid.) While there were, in theory, avenues of complaint open to Gambian citizens, in practice the police were able to operate with impunity. (ibid.) The President of the Gambia’s involvement “in the persecution of supposed witches”, referred to in the country of origin information, was also noted by the Upper Tribunal. (para. 19)

In addition, the Upper Tribunal found, the First-tier judge had failed to explain why “in a country as small as [the] Gambia there would not be a reasonable likelihood of the appellant’s identity and whereabouts being discovered.” (para. 24) “Questions would be asked about where he originated from and in a small country it would not be difficult to find information about his past. Were the persecution of the appellant to recommence, not only would he not be protected by the police but, on the basis of his own previous experience and the experience of his father, it is reasonably likely that the police would participate in this persecution.” (para. 23)

This was an error of law, in the light of which the decision of the First-tier Tribunal had to be, and was, “set aside so far as it” related to the option of internal relocation and its feasibility. The appellant’s appeal was allowed on asylum grounds. (para. 24)

The persecution feared by the appellant was “on the grounds of traditional religious belief and practice”, and the Upper Tribunal therefore found that it did fall “within the concept of persecution by reason of religion in the Refugee Convention.” (para. 23)

Main quotations on cultural or religious diversity:

- “The country information showed that the authorities in [the] Gambia have used witchcraft to persecute persons. Those might be political opponents of the President but other civilians, not involved in politics, might also be caught up in this. In addition, it was clear that [the] Gambia was a small

country, which raised an issue about the viability of internal relocation." (para. 15)

- "[T]he main activity by the President took place in 2009 when more than 1000 villagers from a particular district were taken to secret detention centres by 'witch hunters' accompanied by Gambian police and soldiers. It was said that they were required to drink hallucinogenic potions as an act of exorcism. It was indicated by Amnesty International that the President believed that one of his aunts had supposedly died from witchcraft." (para. 20)
- "More recent country information indicates that witchcraft is still an issue leading to persecution in [the] Gambia. The appellant relied among his evidence on a Daily Telegraph Report of 25 November 2015 on witchcraft in [the] Gambia. In this article the President, Yahya Jammeh, is described as a 'modern-day version of Papa Doc Duvalier, the late voodoo-practising dictator of Haiti'. It was suggested that the President had a 'previous track record of blending statecraft with witchcraft.' Reference was made to the 2009 round up [sic] of more than 1000 supposed 'sorcerers'". (para. 21)

Main legal texts quoted in the decision:

- Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1A

Cases cited in the decision:

- *Januzi v SSHD & Others* [2006] UKHL 5

Commentary

Witchcraft Persecution as Religious Persecution under the Refugee Convention - Ismaila Demba v SSHD [2015] UKUT 01405 (IAC)

In most UK judicial decisions in which witchcraft persecution is linked to an applicant's beliefs, the tendency is for judges to reject the claim of the applicant

and find him or her not credible (see, for instance, *Omoruyi v SSHD* [2000] ECWA Civ 258 (CUREDI013UK009); Millbank and Vogl 2018: 381), or, in other cases, to assert that traditional beliefs and witchcraft do not amount to religion (see, for instance, *BL (Ogboni Cult – Protection – Relocation) Nigeria CG* [2002] UKIAT 01708 (CUREDI013UK010); cases adhering to this "approach include *Prince Michael Paulinus Eze v SSHD* [2000] UKIAT 00TH01308; *Prince Bright Omoregbee v SSHD* [2001] UKIAT 01TH02176" (Bianchini 2021: 3802); *"Feudjeu v SSHD* [2002] UKIAT 07096; *Kenny Keniyinbo Owei v SSHD* [1999]" UKIAT 17447; "*WO (Ogboni cult) Nigeria CG* [2004] UKIAT 00277 [20]; *Dakuro Fibresima v SSHD* [1997]" UKIAT 15904). (Bianchini 2021: 3802) In this regard, Anthony Good comments that in many cases involving traditional beliefs, the phenomenon of religion is left unexamined, and the self-evident status of the "religion" concept is assumed. Decision-makers in relevant spheres have shown little awareness of the potential complexity of "religion" as a concept, nor of contemporary anthropological debates around its conceptual definition (Good 2009: 43). Good suggests that, in asylum decisions, an anthropological approach to religion would allow for ritual practices, supernatural punishments and their consequences, and beliefs in general, to be brought within the definition of religion employed by the Refugee Convention (Good 2007: 69, 72; Bianchini 2021: 3803).

Ismaila Demba v SSHD [2015] is an exception to the tendency described above. In this case, the Upper Tribunal held that the witchcraft persecution "feared by the applicant was on the grounds of traditional religious beliefs and practice" (Bianchini 2021: 3802) (even though the nature of these traditional beliefs and practices was left unanalyzed). The applicant's account, in this case, was found to be credible by the Upper Tribunal, as his testimony "was consistent with" general "background information" on witchcraft in the Gambia (para. 5): this showed that the Gambian state had launched a campaign of persecution against witches. In addition, the applicant's claim was supported by "a medical report which stated that the scars were consistent with the history of assaults" (ibid.) that had been perpetrated upon him. Although none of the testimony discussed in the decision was anthropological in character, the Upper Tribunal considered the corroborating

background evidence to be sufficient to establish the applicant's case. (ibid.) The applicant's subjective fear was found to be credible, and the evidence presented provided objective support for the claim that he faced possible harm upon his return to the Gambia.

It should be noted that several cases "involving witchcraft-related violence" have focused on the existence of state protection and "internal relocation" options. (Bianchini 2021: 3806) These cases were refused because of a lack of evidence regarding the reach of the agent of persecution within the country concerned. One main difference between *Ismaila Demba* and the other cases (the cases, for example, of *Omoruyi* and *BL,* where the applicants feared persecution by secret sects), is that the agent of persecution in *Ismaila Demba* was the state and, therefore, any legal presumption of the viability of internal relocation and state protection in this case can be rebutted. (Bianchini 2021: 3802, 3803) Additionally, in *Ismaila Demba,* the Upper Tribunal reasoned that as the Gambia is a small country (one no larger than Northern Ireland), it would not be difficult for the authorities to ascertain his whereabouts in the country, and it was, therefore, unreasonable to expect that the appellant could find a place of safety via internal relocation. This situation contrasted strongly with the other cases listed above, Nigeria was the applicants' country of origin, and where, consequently, the judges had to take a different approach. (Bianchini: 3806-3809) The judge in *Prince Bright Omoregbee,* for example, noted that Nigeria was a large country whose population exceeded 100 million people. (Bianchini: 3807) In *BL*, in addition, the judge in that case reasoned that the applicant had not provided "evidence to show that the size of the particular cult" cited in that case was such as to make its presence a factor across the entire territory of Nigeria. (ibid.)

Literature related to the main issue(s) at stake:

General legal literature on the topic that may not be directly connected with the case

- Good, Anthony. 2007. *Anthropology and Expertise in the Asylum Courts*. New York: Routledge-Cavendish.
- Good, Anthony. 2009. “Persecution for Reasons of Religion under the 1951 Refugee Convention”. In Thomas G. Kirsch Kirsch and Turner Bertram (eds), *Permutations of Order: Religion and Law as Contested Sovereignties*, 27–48. Abingdon: Ashgate.
- Millbank, Jenni and Anthea Vogl. 2018. “Adjudicating Fear of Witchcraft Claims in Refugee Law”. *Journal of Law and Society* 45 (3): 370–397.

General literature on the topic from other disciplines in the humanities and social sciences, in particular social and cultural anthropology

- Bianchini, Katia. 2021. “The Role of Expert Witnesses in the Adjudication of Religious and Culture-based Asylum Claims in the United Kingdom: the Case Study of ‘Witchcraft’ Persecution”. *Journal of Refugee Studies,* 34(4): 3793–3819.
- Comaroff, Jean and John L. Comaroff. 1999. “Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony”. *American Ethnologist* 26 (2): 279–303.

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