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

Evidence in Witchcraft Asylum Cases - Secretary of State for the Home Department v Meli [2002]

Question(s) at stake:

Whether the adjudicator was correct to grant refugee status to the respondent based on the finding that (1) the respondent was at risk of persecution due to his religious beliefs, and (2) the evidence presented supported the claim that the risk of persecution would be greater upon his return to Cameroon.

Outcome of the ruling:

The decision of the adjudicator granting refugee status to the respondent was incorrect: persecution, in this case, was not on account of any protected ground of the Refugee Convention and the evidence presented did not support the claim that the risk of persecution would be greater upon return.

Topic(s):

- Immigration and Asylum

Keywords:

- Asylum seeker
- Grounds/Reasons of persecution
- Membership of a particular social group
- Refugee status
- Religion or belief
- Internal relocation alternative

Tag(s):

- Witchcraft

Author(s):

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Country:

United Kingdom

Official citation:

Secretary of State for the Home Department v Meli [2002] UKIAT 06977

Link to the decision:

No link available.

ECLI:

No ECLI number / ECLI number unknown

Date:

03 March 2003

Jurisdiction / Court / Chamber:

Immigration Appeal Tribunal

Remedy / Procedural stage:

Appeal

Previous stages:

- Application for leave to appeal to the Immigration Appeal Tribunal (25 November 2002)
- Adjudicator’s decision (appeal heard on 11 July 2002)
- Administrative decision (23 February 2002)

Subsequent stages:

- Remitted for hearing afresh before an adjudicator other than A. E. Thorndike

Branches / Areas of law:

Immigration and Asylum

Facts:

Mr Meli, the respondent, is a citizen of Cameroon, and a campaigner against female genital mutilation who was also the leader of an activist group engaged with that issue. He “claimed to fear persecution” at the hands of a local chief in his home region in Cameroon, who was locally notorious for his putative supernatural powers. (para. 4) Mr Meli claimed that this chief had attacked him using witchcraft, in consequence of which mysterious deaths occurred. The chief, had previously, been accused of killing the respondent’s father (also a social reform activist) and of “threatening his mother.” (ibid.) “[I]n the summer of 2001”, the respondent returned to his home, where he experienced a series of nightmares, which led him to wake up screaming. (ibid.) The following morning “he found a circle of blood and chicken feathers” outside his family’s house. (ibid.) Other experiences reported by the respondent included the sensation of “insects crawling over him” while he lay in bed, the sequel to which involved the discovery, on awakening, of insect infestations. (ibid.) “The respondent said that the chief had” told “his mother that he had cursed her son. The respondent’s mother” asked a witch doctor “to take remedial measures”, but this course of action proved fruitless. (para. 5) The nightmares continued, and the paranoia worsened. With the help of an American pastor recruited by the respondent’s mother, the respondent was able to travel to Paris, from where he proceeded to London. The respondent stated that he still fears the chief’s curse and suffers disturbed sleep at night, when he wakes screaming. Later, he was informed that his mother had fled from Cameroon to Gabon. (ibid.)

After the Secretary of State refused the asylum claim on 23 February 2002, Mr Meli appealed to the Adjudicator against the decision. (para. 3)

The adjudicator, Dr A. E. Thorndike, took the decision to allow the appeal. In so doing, he acted on Refugee Convention grounds, and under Articles 2 and 3 of the European Convention on Human Rights. (para. 1)

The respondent, he found, was credible. The adjudicator said that “He is a product of his culture and has a well-founded fear. The chief was an agent of persecution, singling out social reformers who threatened the status quo on which he (and others like him) relied upon before his power and authority. Reviewing all the evidence I believe the Appellant would face persecution, and even deeper fear the closer he got to the chief.” (para. 7)

The adjudicator also found that an imputed religious opinion provided the Convention reason. The respondent would, he averred, be persecuted if returned to Cameroon and, “in the very particular circumstances of this case, internal flight is not an option. The curse would be all the stronger once on Cameroonian soil”. (para. 8)

The appellant, the Secretary of State, appealed against the adjudicator’s decision. This decision, the Secretary of State argued, was based on a personal opinion, that of the adjudicator. No Convention grounds had been engaged, and the adjudicator’s comment that the curse would be stronger once the respondent was again on Cameroonian soil was not supported by any objective evidence. (para. 10)

Ruling:

The Immigration Appeal Tribunal allowed the appeal, finding that:

(1) evidence to decide whether there is a Convention reason for the alleged persecution is insufficient; (2) in relying on his own knowledge, experience, and expertise, the adjudicator made it impossible to test the reliability of the matters in question, and thus created a significant risk of fairness; and (3) the finding that the curse alleged to threaten the respondent would be stronger should the respondent go back to Cameroon had no basis.

In reaching this decision, the Immigration Appeal Tribunal relied on general principles of law and jurisprudence. The Immigration Appeal Tribunal was strongly and particularly critical of the adjudicator for basing his decision on his own personal, subjective knowledge, and of his not having communicating such expertise to anyone at the hearing. Where there exists a dearth of relevant country information, the Tribunal reasoned, an approach such as that taken by the adjudicator in this case becomes particularly problematic. (para. 12)

The Immigration Appeal Tribunal also strongly expressed “a note of caution about” the use of personally acquired material, and the manner in which such material is used. (ibid.) The use of evidence taking the form of a fact finder’s personal opinion will give rise, the Tribunal stated, to particular difficulties. Here, the Immigration Appeal Tribunal distinguished between reliance on a person’s subjective knowledge, and the deployment of objective material. Objective material will possess content which, if challenged, can be checked in order to facilitate counterarguments: subjective personal knowledge will not. Reliance on subjective personal knowledge should therefore be avoided, giving rise as it does to significant concerns about fairness. (para. 13)

Finally, the absence of either evidence from the respondent or further country information meant that the Immigration Appeal Tribunal was left in a position where it could not decide the appeal. (para. 16)

Main quotations on cultural or religious diversity:

- “The Adjudicator should have made it clear at the hearing that he intended to rely on his own knowledge and expertise. He should have stated the extent of his knowledge and expertise and, at least in outline, the factors which were likely to impinge on his conclusions. This is all the more important where there is little country information to support the Adjudicator’s views, particularly his more extreme conclusions such as, ‘You challenge witchcraft at your peril’, ‘I believe the Appellant would face persecution, and even deeper fear the closer he got to the chief’ and ‘the curse would be all the stronger once on Cameroonian soil’. We are also

concerned about the Adjudicator's claim to be 'conversant with myth and magic', at least without further explanation." (para. 13)

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(2)

Cases cited in the decision:

- *Queen v The Immigration Appellate Authority Ex parte Mohammed CO/918/00*

Commentary

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In this case, after engaging with the evidence presented to it, the Immigration Appeal Tribunal concluded that the adjudicator's decision was not based on objective evidence but relied instead on his personal expertise and judgement. Therefore, the Immigration Appeal Tribunal reasoned, it could not assess whether the persecution claimed by the respondent was associated with religious belief. It is noteworthy that, in this case, the concern about bias stemmed from the adjudicator, and was in favour of the respondent. This contrasts with most cases dealing with witchcraft related claims: these tend to be rejected either because the account of the claimed persecution is not deemed credible, or because it proves impossible to establish a link between the claim and one of the five protected grounds of the Refugee Convention (i.e., race, political opinion, nationality, religion, membership in a particular social group). In general, The majority of adjudicators remain, generally, unsympathetic and resistant to interpretations of witchcraft and cult-based persecution which place such persecutions under the religious persecution ground. (See BL (Ogboni Cult – Protection- Relocation) Nigeria CG [2002] UKIAT 01708; CUREDI22UK010; *Omoruyi v Secretary of State for the Home Department* [2000] ECWA Civ 258;

CUREDI22UK009; Bianchini 2021: 3800).

A common feature of such cases is the absence of a sufficient amount of evidence to support the asylum claim. (Bianchini 2021: 3800).

Given that this was the case here, also, the Immigration Appeal Tribunal commented that it was difficult to reach a decision. It remitted the case for assessment. If the text of the decision is reviewed, it is possible to discern “the frustration” felt by the Immigration Appeal Tribunal concerning the parties’ failure to submit objective evidence. (Bianchini 2021: 3811; see also *HK v Secretary of State for the Home Department [2006]* EWCA Civ 1037; CUREDI022UK013).

In highlighting the central importance of background evidence on country conditions when assessing asylum narratives, this case forms part of a tendency in asylum decisions where witchcraft claims are relevant. The necessity of empirical research is being increasingly emphasized by decision makers seeking to assess the credibility of asylum seekers: where claims and counterclaims that are not anchored in objective data, or additionally or alternatively in publicly sourced information, they are refused. This is especially the case when specific cultural issues are being dealt with. (Lawrance and Ruffer 2015; see *HK v Secretary of State for the Home Department [2006]* EWCA Civ 1037; CUREDI022UK013; see also Bianchini 2021: 3809, 3811, 3812).

Important matters were not even raised in the case: these were issues such as the nature of the cult feared by the respondent, the extent of the chief’s territorial reach (did it extend wholly throughout Cameroon, or only partially?), and/or its possible connections with the police. A different outcome might have been possible in this case, had these issues been dealt with properly – something that raises the question of whether the respondent’s representatives were adequately aware of the cultural and country-specific aspects of the situation. Where cases have been supported by specific country expertise on unknown beliefs and cultural practices that could assist the judge in reaching a “well-informed decision[s]”, they have been, in contrast to this case, subsequently approved. (Bianchini 2021: 3794’ see, e.g., *JA (child – risk of persecution) Nigeria* [2016] UKUT 00560 (IAC); CUREDI022UK001; *HK v Secretary of State for the Home*

Department [2006] EWCA Civ 1037; CUREDI022UK013).

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

- Lawrance, Benjamin N. and Galya Ruffer. 2015. “Introduction: Witness to the Persecution? Expertise, Testimony, and Consistency in Asylum Adjudication”. In Benjamin N. Lawrance and Galya Ruffer (eds), *Adjudicating Refugee and Asylum Status*, 1–24. Cambridge: Cambridge University Press.
- 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.

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Suggested citation of this case-law comment:

Bianchini, Katia (2024): Evidence in Witchcraft Asylum Cases - Secretary of State for the Home Department v Meli [2002], Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI013UK005, https://doi.org/10.48509/CUREDI013UK005.