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

Gender-Based Persecution in Ethiopia – RG (Ethiopia) v. Secretary of State for the Home Department [2006] EWCA Civ 339

Question(s) at stake:

Whether, under the Refugee Convention, women and girls from Ethiopia constitute a particular social group (PSG) and, if they do, whether relocation to another part of Ethiopia should be seen as a feasible option for them to pursue if seeking refuge.

Outcome of the ruling:

The Court of Appeal ruled that women and girls in Ethiopia constitute a particular social group under the Refugee Convention and allowed the appeal. However, it remitted the case on the internal relocation option.

Topic(s):

- Immigration and Asylum

Keywords:

- Asylum seeker
- Domestic violence
- Gender based persecution
- Grounds/Reasons of persecution
- Membership of a particular social group
- Real Risk of persecution
- Refugee status

Tag(s):

- Witchcraft

Author(s):

- Bianchini, Katia (Max Planck Institute for Social Anthropology, Department Law and Anthropology, Germany)

Country:

United Kingdom

Official citation:

RG (Ethiopia) v. Secretary of State for the Home Department [2006] EWCA Civ 339

Link to the decision:

https://www.refworld.org/cases,GBR_CA_CIV,46b82ed22.html

ECLI:

No ECLI number / ECLI number unknown

Date:

04 April 2006

Jurisdiction / Court / Chamber:

Appeal from Immigration Appeal tribunal (AIT)

Remedy / Procedural stage:

Appeal from Immigration Appeal tribunal (AIT)

Previous stages:

- Immigration Appeal Tribunal, decision notified on 28 January 2005
- Adjudicator, decision promulgated on 2 January 2004

Subsequent stages:

- Remitted to the AIT

Branches / Areas of law:

Administrative law; Asylum law

Facts:

RG, “the female appellant is a citizen of Ethiopia who arrived in the United Kingdom on 21 April 2002, on which date she applied for asylum. At this time, she was 15 years old and because she was a minor “she was granted” discretionary leave to remain in the UK until she turned 18, in accordance with the European Convention on Human Rights (ECHR). (para. 2) Upon reaching the age of 18, she again sought asylum, which was granted by the adjudicator on January 2, 2004. (para. 1)

Shortly thereafter, the Secretary of State put forward the claim that, in granting asylum to RG, the adjudicator had been responsible for several errors in law. The Secretary of State then appealed to the Immigration Appeal Tribunal (IAT), which decided that the appellant’s claim for asylum was flawed. The IAT granted the Secretary of State’s appeal. (ibid.)

The IAT found that women and girls from Ethiopia do not constitute a particular social group under the Refugee Convention: the present appeal challenges this finding. (ibid.)

The facts of the appellant’s life were not disputed by any party to the case. (para. 4) She presented evidence that her sister had been “married at age 13 to a much older man”. This man “ill-treated her and used her in black magic rituals”, and this treatment drove her to make an escape attempt, in the course of which she died. (ibid.) Soon afterwards, and in accordance with “local custom”, the same man insisted on marrying the appellant, who was at this time 14 years of age. Her mother did not allow this, but the man was still able to abduct, beat and rape the appellant, whom he also “used in his black magic rituals.” “Eventually”, she was able to successfully escape: “she and her mother fled to another town.” (para. 5) In Addis Ababa, the Ethiopian capital, the appellant met an American man who promised to take her to the United States, where he would employ her (he claimed) as a nanny. Instead, this man took her to Zimbabwe, where he raped

her, before then bringing her to the UK. On their arrival at a UK airport, RG was abandoned by this man. (para. 6)

The adjudicator accepted that RG's fear of persecution was a well-founded one, and that this was so due to her membership in a particular social group, i.e., women in Ethiopia. Furthermore, the adjudicator found, there was objective evidence to support the argument that "state protection for women and girls" against serious gender-based abuse in Ethiopia was insufficient, given that such abuse is due to both cultural traditions and legislative discrimination. (para. 8)

The IAT, however, considered that the adjudicator had not properly taken into account the reasoning in *R v IAT ex parte Shah* [1999] 2 AC 629 (hereafter *R v IAT ex parte Shah*): on the basis of that judgement, the IAT held "that women and young girls in Ethiopia" could not be considered a particular social group. (paras. 8-11)

RG submitted that: (1) the IAT's finding that women and young girls in Ethiopia could not be considered a particular social group represented an error in law, as the reasons it presented for this finding were wholly inadequate; (2) the adjudicator had been correct to find that women and girls in Ethiopia faced forms of serious discrimination that were attributable to both cultural traditions and legislation. (para. 12)

The Secretary of State maintained that the decision of the IAT had been correct. He additionally argued that the possibility of internal relocation within Ethiopia ought to have been considered. The adjudicator, he ruled, had not thoroughly addressed this aspect of the case, having only examined the two towns to which the appellant had fled. In particular, the adjudicator had failed to consider the possibility of relocation to Addis Ababa, the Ethiopian capital. In spite of the fact that this question had been raised, the IAT declined to deal with it. (paras. 9, 16, 41)

Ruling:

The Court of Appeal ruled as follows:

(1) The IAT’s decision was flawed, to the point where it did indeed constitute an error in law. The finding of the IAT was based solely on the fact that, according to the finding of the House of Lords in *R v IAT ex parte Shah,* the situation in Ethiopia was different from that which pertained in Pakistan. The Court of Appeal stated that such an argument was clearly insufficient, as the existing situation in every country other than Pakistan would necessarily and to some extent different from that .existing in that South Asian country. The House of Lords had not asserted, and was not asserting, that, for a case to meet the test under Article 1A(2) of the Refugee Convention, “it had to be in every respect identical to” *Shah and Islam*. (para. 21)

(2) Women in a given society may constitute a particular social group, one in which membership might entail a risk of persecution. Further case law, cited by Lord Justice Keene, has established “that discrimination against women need not be embodied in law if” women, “in practice”, are confronted with “a systematic lack of protection.” (para. 32) Regarding the situation in Ethiopia, the judge referred to the submitted evidence on country conditions and found that while the legislative situation seemed to be improving, there was no evidence of any increase in convictions for rape. (para. 33) Nor was there any evidence of state action against abduction, "underage marriage”, or “marriage by abduction”, “despite the raising of the marriage age.” (para. 33) Legislation was still in force in Ethiopia that legitimized “the marriage of abducted and raped girls to their violators”, consequently exempting “the latter from punishment”. (para. 34) This demonstrated the legal system’s discriminatory stance towards women. Such discrimination, along with for a picture (supported by evidence) of women lacking protection from sexual abuse and serious discrimination, revealed “a degree of complicity by the state in the treatment of women in Ethiopia, sufficient to entitle the adjudicator to conclude that women constituted a particular social group.” (para. 35) The adjudicator had been correct “to find that there was generally insufficient state protection for women” against “serious abuse”: the reasons for these findings presented by the adjudicator had been clear and adequate. (ibid.)

(3) However, the adjudicator had not considered, but should have considered, an alternative possibility: that of internal relocation to elsewhere in Ethiopia. He should have considered, specifically, “whether there was some part of Ethiopia where” RG “could live without” facing “a real risk of persecution.” (para. 41) The case was, accordingly, remitted for a decision on the option of internal relocation. (para. 42)

Main quotations on cultural or religious diversity:

- “One notes especially the reference to penal law in Ethiopia legitimising the marriage of abducted and raped girls to their violators, which marriage then exempts the latter from punishment. Though that reference in the adjudicator’s determination comes from a report probably produced in about 2001, counsel for the Secretary of State accepts that this provision of Ethiopian penal law still operates […] The existence of the provision in penal law still shows an institutionalised discrimination by the legal system in Ethiopia against women, and that is of significance. As for the raising of the marriage age, the evidence suggests that that is widely ignored in practice, especially in the rural areas.” (para. 34)
- “This institutionalised legal discrimination must be regarded as of considerable importance. Along with the evidence of a lack of protection of women against sexual abuse and serious discrimination, it shows a degree of complicity by the state in this treatment of women in Ethiopia, sufficient to entitle the adjudicator to conclude that women constituted a particular social group.” (para. 35)
- “Whatever attempts were being made by the government to improve the situation, those passages indicate that wife beating and marital rape are ‘pervasive social problems’; that the availability of protection through the police and the courts is reduced by societal pressures and limited court facilities, especially in rural areas; that abduction still appears to be practised widely; and that the law still allows rapists to escape punishment

by marrying their victims. These features of Ethiopian society were, in my judgment, quite sufficient to enable the adjudicator to conclude properly that women were inadequately protected by the state. If there was such protection such widespread serious sexual abuse would not exist. The facts speak for themselves." (para. 38)

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:

UK cases cited:

- *R v IAT ex parte Shah* [1999] 2 AC 629
- *P and M* [2004] EWCA Civ 1640
- *R (Hoxha) v Special Adjudicator* [2005] UKHL 19

Australian cases cited:

- *Applicant v. MIMA* [2004] 8 CA 25

Commentary

Gender-Based Persecution in Ethiopia – RG (Ethiopia) v. Secretary of State for the Home Department [2006] EWCA Civ 339

This case clearly sets out that, in particular circumstances, women, or a sub-set of women, may be considered members of a particular social group under Article 1 of the Refugee Convention. In particular, it establishes that if an applicant is to demonstrate membership in a PSG the applicant must establish that he or she shares an innate characteristic or common background with that group, and that this characteristic or background is immutable, i.e. cannot be changed. Additionally, however, the House of Lords stressed that 'the group in question had to exist independently of the persecution and could not be defined by the fact of

persecution’. (para. 24)

The seminal House of Lords decision *Ex Parte Shah*, which this case follows, held that, if persecuted women were to be considered a Particular Social Group, some state involvement in their persecution had to be demonstrated. With this decision, however, the Court of Appeal has clarified that it is not necessary to show that the state is *directly* involved in the persecution of women, in order for women so persecuted to be considered members of a Particular Social Group. It is suffices to demonstrate that women face serious discrimination due to cultural traditions, and that the state fails to provide protection to them. Accordingly, this case has lowered the burden for proving that women constitute a particular social group.

In this case, there was little discussion of the fact that the appellant had fled black magic rituals, and that this was an additional cause of her having suffered persecution. The text of the case suggests that this aspect of the case was not treated as a ground for obtaining asylum but was, instead, linked to the facts of the gender claim. The case therefore confirms previous research showing that witchcraft persecution is usually perpetrated against victims (i.e., women, elderly, children) who also suffer multiple discriminations, and who suffer them both at the hands of family or community members, and in the full knowledge of the state (Edwards 2013: 322, 331*–*332; Bianchini 2021: 3798, 3805, 3806). This case, in other words, reflects a general trend – a trend in which witchcraft violence is generally consigned to the margins, in spite of its increasing occurrence in asylum, criminal, and care proceedings

JA (child – risk of persecution) Nigeria [2016] UKUT 00560 (IAC); CUREDI013UK001 provides one case where an appellant was at risk of witchcraft persecution and discrimination: in this case the appellant was a child suffering from albinism. For another, similar, case see t, *Oco v A Decision of The Upper Tribunal (Immigration and Asylum Chamber)* [2012] CSIH 65; CUREDI013UK003, where a woman was a victim of domestic violence and witchcraft.

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

- 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.
- Edwards, Susan S. M. 2013. “The Genocide and Terror of Witchcraft Accusation, Persecution and Related Violence: An Emergency Situation for International Human Rights and Domestic Law”. *International Family Law* 4: 322*–*330.

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Suggested citation of this case-law comment:

Bianchini, Katia (2024): Gender-Based Persecution in Ethiopia – RG (Ethiopia) v. Secretary of State for the Home Department [2006] EWCA Civ 339, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI013UK006, https://doi.org/10.48509/CUREDI013UK006.