CUREDI013UK009

Question(s) at stake:

Whether the acts of the persecutor were connected to the appellant's religion, in a way consistent with the grounds for persecution recognised under the Refugee Convention, and what is the meaning of the word "religion" under the Refugee Convention?

Outcome of the ruling:

The court refused the appellant's asylum claim because it ruled that he was not facing a form of persecution associated with one of the reasons (in this case, religious belief) valid under the Refugee Convention –: that is, the threat to the appellant was not related to the his religious beliefs but to the fact that he would be forced to comply with certain demands made by a secret cult associated with idol worship.

Topic(s):

- Immigration and Asylum

Keywords:

- Asylum and statelessness
- Grounds/Reasons of persecution
- Refugee status
- Religion or belief

Tag(s):

- Witchcraft

Author(s):

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Country:

United Kingdom

Official citation:

Omoruyi v Secretary of State for the Home Department [2000] ECWA Civ 258

Link to the decision:

https://www.casemine.com/judgement/uk/5a938b4360d03e5f6b82c1a2

ECLI:

No ECLI number / ECLI number unknown

Date:

12 October 2000

Jurisdiction / Court / Chamber:

Supreme Court of Judicator Court of Appeal (Civil Division)

Remedy / Procedural stage:

Appeal from immigration tribunal appeal

Previous stages:

The application for refugee status was rejected in all previous stages (no official citations are available for the previous stages).

- Immigration and Asylum Tribunal (12 March 1999)
- Special Adjudicator (9 May 1998)
- Secretary of State (29 August 1996)

Subsequent stages:

None

Branches / Areas of law:

Administrative law; Asylum law

Facts:

Mr Omoruyi, the appellant, was a Nigerian seeking asylum on the grounds that he feared persecution by members of the Ogboni cult. (p. 1) According to Mr Omoruyi, his father was part of a cult and expected him to join because he was his father's eldest son. Finding this contrary to his Christian religious faith and upbringing, he had refused to comply with this expectation. (p. 2) When his father died, he refused to surrender his father's body to the cult, and had him buried in the family compound. As a consequence, the cult told him that "he had violated the laws of the society and that the "penalty for this is death". (p. 2) The appellant described the Ogboni cult as a "mafia organization involving criminal acts", a "devil cult" whose rituals involved idol worship, animal sacrifice, and the drinking of blood. (ibid.) Its members included politicians, civil servants, police, doctors, and members of the legal profession. (p. 3) He further claimed that the Ogboni had used human organs to prepare "satanic concoctions", and that it practised the "ritual killing of innocent people". (ibid.) The appellant said that after his father's death, cult members killed and mutilated his brother, whom they had mistaken for him. (p. 4) After Mr Omoruyi fled to the UK, his 3-year-old son was also killed and mutilated by the cult. (ibid.; Bianchini 2021: 3801)

The appellant sought asylum on the ground that he had a well-founded fear of religious persecution at the hands of members of the Ogboni cult. Article 1(2) of the Refugee Convention defines a refugee as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." (p. 5)

The Secretary of State argued that, if a person were to qualify as a refugee under the definition provided by the Refugee Convention, then that person would have to provide proof of a link between the harms they feared and one of the five grounds ("for reasons of") of persecution. (ibid.) In this case, it meant that the persecutor threatening the appellant had to be motivated by religion. Such a motivation was not demonstrated by the appellant, who failed to prove that the Ogboni cult intended to harm him due to his Christian faith specifically. Rather, the cult had targeted him because he had disobeyed them. (p. 14) "There is no reason to suppose that the Ogboni would not be equally intent upon harming anyone else who crossed them: they would be quite indifferent to whether that person's defiance was because of religious beliefs or for any other reason.' (p. 6)

Ruling:

The appellant's problems stemmed not from his Christianity *per se* but "from his refusal to comply with" the Ogboni cult's "demands". Therefore his asylum claim failed for lack of a Convention reason. (p. 14)

The judge, Sir Simon Brown, cited the definition of the right to religion developed by Professor James Hathaway. According to this definition, the right to religion "consists of two elements": (1)" the right to hold or not to hold any form of theistic, non-theistic, or atheistic belief"; (2) "the ability to live in accordance with a chosen belief, including participation in or abstention from formal worship and other religions sects, expression of views, and the ordering of personal behaviour. (p. 6) He then considered whether the Ogboni was a "religion" for Convention purposes, and concluded that it was not. He reasoned that the Ogboni cult involved "pagan rituals" (p. 7) and was not "in any true sense a religion". (Ibid.) Rather", it "was a criminal organisation". (ibid.; Bianchini 2021: 3801-3802)

Moreover, the judge held (and here he referred to British and Australian precedents) that the Ogboni cult had not exhibited discriminatory intent towards the appellant. (ibid.) The cult had not singled out the appellant because of his Christian belief. He may have been more at risk than others because of his religion, but this mere fact did not qualify him for asylum any more than

enhanced vulnerability to pervasive violent attacks experienced by women during civil unrest would qualify such women for asylum. This was the court's decision in the case of *R v IAT ex parte Shah* [1999] 2 AC 629. (p. 7) The court concluded that the appellant had not been targeted by the Ogboni cult on account of his Christian beliefs, but because of his defiance of the cult, and the fact that he had dared to defy them. The cult had no particular interest in his specific religious (or other) reasoning or beliefs. The risk of harm the appellant faced at the hands of the Ogboni was not due to a"ny religious difference between" he and them, but because he had dared to cross the Ogboni, "a ruthless criminal gang." (p. 14)

A person who claims asylum on the basis of a well-founded fear of persecution must be able to show that there is some *connection* between a Convention reason and the potential acts of the feared persecuting agent. Where persecution of a claimant occurs without such a connection to a Convention ground, then that persecution is not sufficient to establish a Convention claim. Here, the claimant feared persecution by cult members if he returned home for refusing to surrender his father's body. In reality, the cult's animosity arose from that refusal and was not aimed at his religious beliefs.

Main quotations on cultural or religious diversity:

- "Let me at this stage deal with Mr Blake's argument that the Ogboni mafia itself is properly to be considered a religion for these purposes. There are, he suggests, clear religious elements to their practices which merit such a characterisation: the worship of idols, sacrifice of animals and the like. This argument I would utterly reject. The notion that a "devil cult" practising pagan rituals of the sort here described is in any true sense a religion I find deeply offensive. Assume opposition to such practices on the part of a secular state; is that to be regarded as a religious difference? I hardly think so. It seems to me rather that these rites and rituals of the Ogboni are merely the trappings of what can only realistically be recognised as an intrinsically criminal organisation -- akin perhaps to the voodoo element of the Ton-Ton Macoute in Papa Doc Duvalier's Haiti." (p. 7)

- “In short, this case fails not for want of enmity or malignity on the part of the Ogboni (these feelings, we must assume, were present in abundance), but rather because that motivation (that hostility and intent to harm) was in no realistic sense discriminatory against the appellant on account of his Christianity but rather stemmed from his refusal to comply with their demands.” (p. 14)

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
- *R v Secretary of State for the Home Department ex parte Turgut* [2000] UKHRR 403

Australian cases cited:

- *Gomez v Immigration and Naturalization Service*, 947 F.2d 660
- *Chen Shi Hai v Minister for Immigration and Multicultural Affairs* 2000 HCA 19

US cases cited:

- *Secretary of State for the Home Department v. Savchenkov*, 1996 Imm A.R. 28 (1996).

Commentary

The Meaning of Religion in the Refugee Convention According to Omoruyi v Secretary of State for the Home Department [2000] ECWA Civ 258

The definition of “religion” has rarely been an issue in British asylum cases, and there is, as yet, no Supreme Court ruling on that definition.

This particular ruling is relevant because it represents a key source on the topic of religious persecution. Anthony Good has found the approach taken by the court to be unsatisfactory from an anthropological perspective. In particular, Good argues that the court's view is premised on a prejudiced of how "religion" should be defined, and reveals an ignorance of how, over several decades, "anthropologists have attempted to define 'religion'." (Good 2007: 69; Bianchini 2021: 3803) Had the court considered contemporary anthropological approaches to religion, it would have had to conclude that the Ogboni cult is undoubtedly a religion, unattractive though it may be (Good 2009: 45; Bianchini 2021: 3803). It should be noted, here, that the court relied solely on the conception of religion provided by the leading refugee law scholar James Hathaway, and no other source was mentioned by it. All the other cases and sources cited address the question of whether the appellant was faced with discriminatory intent on the part of the Ogboni cult.

Omoruyi has been cited quite often by judges in other decisions, not in relation to the definition of religion but, rather, where the issue of the persecutor's intent has been involved. Given the complexity of the case law and literature on the matter of 'persecutor's intent', I will not discuss it further here, and only mention the following important cases: *EG (Non-state actors: Acero-Garces disapproved) (Colombia)* [2000] UKIAT 00007 (24 November 2000); *Sivakumar, R (on the application of) v Immigration Appeal Tribunal* [2001] EWHC Admin 109 (22 January 2001); *Storozhenko v Secretary of State For Home Department* [2001] EWCA Civ 895 (15 June 2001); *AA (Persecution "Causing" Public Affection Religion Unmarried) Iraq CG* [2002] UKIAT 07246 (17 March 2003); *Sepet & Anor, R (on the application of) v Secretary of State for the Home Department* [2003] UKHL 15 (20 March 2003); *WO (Ogboni cult) Nigeria CG [2004] UKIAT 00277* (30 September 2004); *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 445 (IAC) (28 November 2011); *TG and others (Afghan Sikhs persecuted) (CG)* [2015] UKUT 595 (IAC) (3 November 2015)

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

Literature cited by the case:

- Goodwin-Gill, Guy S. 1999. "Judicial Reasoning and 'Social Group' after *Islam* and *Shah*". *International Journal of Refugee Law* 11 (3): 537–543.
- Hathaway, James C. and Michelle Foster. 2014. *The Law of Refugee Status*. Cambridge: Cambridge University Press.

Additional literature:

- 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.
- Good, Anthony. 2007. *Anthropology and Expertise in the Asylum Courts*. Abingdon: Routledge Cavendish.
- Good, Anthony. 2009. "Persecution for Reasons of Religion under the 1951 Refugee Convention". In Thomas G. Kirsch and Bertram Turner (eds), *Permutations of Order: Religion and Law as Contested Sovereignties*, 27–48. Farnham: Ashgate.

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