



# Commonwealth Legal Assistance News

# 39

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## INSIDE

3. **Extradition – Whether extradition judge can decide on applicability of Extradition treaty**
4. **Extradition – Murder – whether evidence of translated witness statement admissible**
4. **Extradition – extraterritorial offence – requirement that offence be committed within jurisdiction of requesting state.**
5. **Immigration – whether clan-based civil law amounted to persecution under the Refugee Convention**
8. **Asylum – fear of persecution and not prosecution required by Convention**

**Extradition – surrender of nationals to foreign state – offence carrying death penalty – whether sending state required to seek assurances that death penalty will not be imposed – whether surrender without assurances will infringe constitutional guarantee against cruel and unusual punishment and right to enter and remain in Canada – Charter of Rights and Freedoms, Ss. 12& 32(1) and s. 6(1)- Canada/US Extradition Treaty – Canadian Extradition Act 1985 – (Canada)**

B and R, Canadian nationals, were wanted in Washington State in the United States for the murder of three members of R's family. It was alleged that B and R were at the house of R's family on the night of the murder and later left the USA and went to Canada. While the American police suspected the two in the murder they did not have sufficient evidence upon which to base charges. The RCMP, working under cover, were able to obtain some evidence linking B and R to the murders. The Attorney General of British Columbia decided against prosecuting them in Canada for the offence of conspiracy to commit murder, and the authorities in the US commenced extradition proceedings for B and R to be tried in Washington State. The Minister of Justice for Canada ordered their extradition without seeking assurances from the US under Article 6 of the Canada/USA Extradition Treaty, that in the event of a conviction, the death penalty will not be imposed or if imposed would not be carried out.

On appeal, the Court of Appeal ruled that the Minister's surrender order without assurances, violated the mobility rights of B and R under s. 6 of the Canadian Charter of Rights and Freedoms. The Court ordered the Minister to seek assurances as a condition of the surrender.

The Minister appealed. He contended that assurances should be sought only in circumstances where the particular facts of the case warrant a special exercise of discretion and that assurances should not be sought routinely pursuant to Article 6 of the Treaty in every case in which the death penalty is applicable. He argued that Canada should not be used as a safe haven for persons seeking to escape justice, even if they are Canadian nationals.

The respondents on the other hand submitted that not only did they have a right to remain in Canada as Canadian Citizens under s. 6(1), to extradite them without seeking assurances that the death penalty will not be imposed or carried out, infringed their

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For further information or copies, please contact: The Editor, Criminal Law Unit, Legal & Constitutional Affairs Division (LCAD), Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom.  
Tel: +44 (0)20 7747 6417/6420/6423  
Fax: +44 (0)20 7839 3302  
E-mail: k.prost@commonwealth.int  
v.wright@commonwealth.int

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constitutional rights as protected by sections 6, 7 and 12 of the Charter.

Section 6 (1) of the Canadian Charter of Rights and Freedoms provides that "every citizen of Canada has the right to enter, remain in and leave Canada". Section 7 provides that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". Section 12 provides that "everyone has the right not to be subject to any cruel and unusual treatment or punishment".

Article 6 of the Canada/USA Extradition Treaty provides:

"When the offence for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offence, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or if imposed, shall not be executed".

➤ **Held:**

1. In order for the Court to answer the question whether the Constitution supports the position of the Minister that assurances need only be sought in exceptional circumstances or whether assurances must always be sought barring exceptional circumstances, it needed to examine (i) the minister's power and responsibilities under the Extradition Act and (ii) the Charter issues raised by the respondents.

The Minister's power to surrender a fugitive from justice is regulated by s. 25 of the Extradition Act, which creates a broad discretion that the Minister must exercise in accordance with the dictates of the Charter. The constitutionality of this power had not been challenged. The issue was, as a matter of constitutional law, did the Minister have the power to decide to surrender the respondents without seeking assurances, as a matter of routine. Although the setting of foreign policy is a matter for the executive, the court is the guardian of the Constitution and death penalty cases are uniquely bound up with basic constitutional values. Death penalty cases raise issues of fundamental importance to Canadian society.

2. In respect of the Charter issues raised by the respondent, the court considered the rights allegedly infringed separately:

(i) In respect of Section 6(1), the right to mobility, extradition was *prima facie* an

infringement of the right of every Canadian to "remain in Canada", because the person being extradited does not leave the country of his own volition. The forcible removal becomes lawful only because it is justified under section 1 of the Charter: *Re Federal Republic of Germany and Rauca* [1983] 41 O.R. (2d) 225 (C.A.). The justification is rationally connected to the important objectives of international law enforcement which are essential to the maintenance of free and democratic society. This therefore warrants the limited interference with the mobility rights under section 6. The court rejected the respondent's argument that extradition without assurances was an impairment of their mobility rights the result of which was not minimal. In the Court's view, extradition with assurances would result in the forcible removal of the respondents from Canada as much as extradition without assurances. The death penalty on the other hand is primarily a justice issue which must be dealt with under section 7 of the Charter and only marginally a mobility rights issue.

(ii) The next issue for determination was whether the imposition of the death penalty infringes the right not to be subjected to cruel and unusual treatment or punishment guaranteed by section 12. The Charter guarantees rights and freedoms within Canada; it cannot govern the actions of a foreign country. "In particular the Charter cannot be given extraterritorial effect to govern how criminal proceedings in a foreign country are to be conducted": *Canada v. Schmidt* [1987] 1 S.C.R. 500 at p. 518 ... However, the court agreed with the respondent that Canada could not avoid shouldering responsibility for the imposition of the death penalty just because it would be a foreign government that would impose it. The protection imposes an affirmative obligation on Canada to protect against the imposition of the death penalty.

(iii) However, the proper place to discuss the responsibility of the state in respect of the death penalty was s. 7 of the Charter. This section is concerned not only with the act of extradition but also with its potential consequences. The court in *Kindler* [1991] 2 S.C.R. 500 and *Re Ng* [1991] 2 S.C.R. 858, envisaged a balancing exercise that

considers whether the act would “shock the conscience of Canadians”. This means that even though the rights of fugitives are to be considered in the context of other applicable principles of fundamental justice, which are normally of sufficient importance to uphold the extradition, a particular treatment or punishment may sufficiently violate the nation’s sense of fundamental justice as to tilt the balance against extradition. An extradition that violates the principles of fundamental justice will always shock the conscience.

Fundamental principles of justice are derived from the basic tenets of the Canadian legal system. Various factors favour extradition only with assurances: (1) the death penalty has been rejected in Canada as an unacceptable form of punishment. (2) Canada has been the main champion in the international community for the abolition of the death penalty, and although it could not be said to be a norm of international law, there was progressive acceptance of abolition as a principle of fundamental justice. (3) Almost all jurisdictions including Canada, treat some characteristics of the fugitive as mitigating factors in death penalty cases, in this case the fugitives were 18 at the time of the alleged offences. (4) The accelerating concern about potential wrongful convictions was a factor of increased weight. The fact that there had been in the recent past, a number of wrongful convictions for murder both in Canada and the USA constitute tragic testimony to the fallibility of the criminal justice system. (5) The “death row phenomenon” was also a factor that weighs against extradition without assurances.

3. To extradite the respondents without assurances was not justifiable under section 1 of the Charter and the Minister had not shown that extraditing R and B to face the death penalty without first obtaining assurances that the penalty would not be carried out, was necessary to achieve the government’s objective of advancing mutual assistance in criminal matters.

In the absence of exceptional circumstances, assurances in death penalty cases are always constitutionally required, and the Minister was wrong not to have sought them.

*United States v. Burns* 2001 SCC 7

## **Extradition – applicability of Extradition treaty – Whether within the jurisdiction of extradition hearing judge – (Canada)**

The Kingdom of Thailand sought the extradition of K from Canada, relying on the Treaty between the United Kingdom and Siam Respecting the Extradition of Fugitive Criminals signed in 1911 and the Canadian Extradition Act of 1999. K contended that the Treaty no longer applied to Canada since the coming into force of the Extradition Act. He applied to the High Court of British Columbia for three orders, viz: (i) an order quashing the authority to proceed issued by the Minister of Justice under section 15 of the Act; (ii) an order quashing the warrant of arrest; (iii) an order declaring the extradition hearing to be a nullity.

Thailand on the other hand argued that the question of whether the Treaty was still in force was not for the determination of the extradition judge, but for the Minister to decide. In the alternative, Thailand argued that even if the judge had jurisdiction, the application lacked merit.

▷ **Held:** refusing the application;

1. The central question for the determination of the Court was said to be thus: “what are the respective roles of the Minister and of the courts in determining whether the Treaty qualifies as an ‘extradition agreement’ within the meaning of the Act?” Section 2 of the Act defines extradition agreement as “an agreement that is in force, to which Canada is a party and that contains a provision respecting the extradition of persons”. The treaty does contain provisions respecting the extradition of persons, but the issue is who determines whether the treaty is in force or not and whether Canada is a party to it. Without an extradition agreement, Thailand could not be said to be an extradition partner to which a person could be extradited.

2. Before issuing an authority to proceed, the Minister must be satisfied among other things, that the extradition would be in accordance with a relevant extradition treaty. It follows that it was for the Minister to determine whether or not the treaty in question was one under which extradition could be ordered. To extradite a person to a country that was not an extradition partner would be unlawful. Section 43 of the Act allows for the person who is the subject of extradition to make submissions to the Minister within 30 days of the committal order in respect of any ground

that may be relevant to the making of the decision to surrender. The Act also provides for judicial review of the Minister's decision to surrender by the Court of Appeal. There is nothing in the Act that permits issues to be raised before an extradition judge. To do so would be duplicitous and not in accordance with legislative intent that the extradition hearing should be "... an expedited process, designed to keep expenses to a minimum and ensure prompt compliance with Canada's international obligations": *USA v. Dynar* [1997] 2 S.C.R. 426.

Under the Act, there are no overlapping areas of responsibility shared by the extradition hearing judge and the Minister: *Federal Republic of Germany v. Schreiber* [2000] O.J. 2618, p.72. The question of the applicability of the treaty was not within the jurisdiction of the extradition-hearing judge, but for the Minister whose order was subject to judicial review by a higher court.

*Kingdom of Thailand v. Karas*. [2001] BCSC 72

### **Extradition – person wanted for murder charge – whether evidence of translated witness statement admissible – police impropriety – (UK)**

S was committed to custody to await surrender to India on charges of murder and conspiracy to commit murder in India. A witness, allegedly an accomplice, had given evidence against him before a magistrate in India. That evidence was given in Hindi and was translated by the Magistrate to English when he recorded it in a deposition. The witness later retracted the statement on the basis that it was made under torture and intimidation by the police. The magistrate making the committal order rejected arguments for the exclusion of the statement and admitted it.

S applied for habeas corpus challenging the committal order. He argued that the evidence should not have been admitted because the actual record of the evidence in the proceedings in India had not been provided nor was there any expert translation of the evidence admitted by the magistrate. Moreover, the evidence did not justify committal. Finally, he contended that the accusation against him was made in bad faith thereby making the extradition unjust and oppressive under s. 11(3) of the Extradition Act.

○ Held: allowing the application;

1. Under section 27 of the Extradition Act, evidence could be contained in a deposition to be heard, without the need to call the maker. However, in order for the deposition to be admissible, it must be given on oath and authenticated. In this case, the witness could not be said to have adopted his deposition as a record of his evidence because he did not speak English and therefore could not know what the translated record set out. The deposition was therefore secondary evidence and could not be admitted. The translation merely purported to establish an English version of what was said in Hindi and it was impossible to identify inconsistencies in the translation without referring to the actual evidence.

2. When considering whether to exclude evidence under section 78 of the Police and Criminal Justice Act, the burden of proof on the defence and the prosecution was neutral, the magistrate being required only to evaluate the evidence tendered by both parties as to the circumstances under which the evidence was taken and whether it would have an adverse effect on the proceedings. The magistrate's decision was within the margin of opinion open to him and could not be challenged on the ground that it was unreasonable.

3. On the issue of the propriety of the accusation, a request for extradition was not in essence an accusation and even though there might have been an obvious link between the accusation and the request, it is the accusation and not the request that must be made in good faith in the interest of justice. "Accusation" was wide enough to include accusations made by a witness, such that if the accusation was not made in good faith as in the case of the witness in the Indian proceedings, it would be unfair and unjust to surrender S to India because of the significant risk that the police misbehaviour had tainted the evidence to the extent that a fair trial would be impossible.

*Re Saifi, R. v. Governor of Brixton Prison, ex parte Saifi* Times, 24 January 2001

### **Extradition – extra-territorial offence – jurisdiction - requirement that offence be committed within jurisdiction of requesting state – (UK)**

A-F was wanted in the United States of America (US) for conspiring to murder US citizens. He was alleged to be part of an Islamic terrorist group

devoted to violent opposition of the US. His extradition was sought from the UK on the basis of his membership in a terrorist organization and links with another alleged conspirator. The magistrate holding the committal proceedings admitted the evidence of an anonymous witness on the basis that the cumulative effect of the circumstantial evidence was such that the evidence was not so inherently incredible that no jury could convict on it. Moreover A-F would not be prejudiced thereby. A-F was committed to await the decision of the Secretary of State on surrender.

He applied for habeas corpus. The court had to determine whether:

(i) for extradition, under the governing provisions of English Law, the crime had to have been committed within the territory of the US, or whether it was sufficient that the conduct was governed by the extra-territorial jurisdiction of the US and would, in similar circumstances, be governed by the extra-territorial jurisdiction of the UK;

(ii) the magistrate had erred in law in admitting the evidence of the anonymous witness.

○ **Held:** dismissing the application;

1. Under Schedule 1 of the Extradition Act 1989, (in contrast to other provisions of the Act) the crime for which extradition is sought must have been committed in the territory of the requesting state so that it could be transposed into the UK for purposes of extradition. It was not enough that the crime would be indictable under the extra-territorial jurisdiction of the UK.

Further, reliance could not be placed on a "deeming" provision to meet a factual test as to whether overt acts were committed on the territory of the requesting state.

However, in this case, the evidence of acts of A-F relied on by the U.S. were sufficient to establish a prima facie case of conspiracy within the required territorial jurisdiction.

2. In respect of the issue of the admission of the evidence of the anonymous witness, no rule of law exists to regulate this. Therefore, the magistrate needed to apply his discretion in the fair trial of the matter before him, to decide whether to admit it even though he was not satisfied as to the creditworthiness of the witness. Moreover, the rules of the European Court of Human Rights did not affect the domestic law in this case because the magistrate had effectively ensured judicial

supervision of A-F's detention as required by Article 5 (4) of the Convention. In order for the supervision to be declared to be in violation of Article 5(4), it had to be so defective that it could not be said to be judicial at all. Neither in domestic law nor in the jurisprudence of the European Court could it be said that the manner in which the magistrate dealt with the anonymity of the witness made the proceedings so unfair that they were rendered invalid as a control over the continued detention of A-F.

*Re Al Fawaz* [2000] All ER (D) 2052 (QBD)

**Immigration - Refugees - Protection visa - Clan-based conflict in Somalia - Whether persecution on Convention grounds - Use of terms "civil war", "civil conflict" and "systematic persecution" - Whether Convention definition permits or requires examination of the "motivation" for or "objects of" a "civil war" or "civil conflict" or demonstration of a "differential operation" upon an applicant's social group - (Australia)**

Ibrahim, a national of Somalia left that country in June 1995 because of the war. After he left Somalia, he lived for sometime in Thailand arriving in Australia on 25 December 1997. He applied for a protection visa on 7 January 1998. He was refused and he applied for review by the Refugee Review Tribunal. The Tribunal affirmed the decision to refuse the visa. He appealed to the Federal Court, which allowed his appeal and remitted the case back to the Tribunal. The Minister for Immigration and Cultural Affairs then appealed to the High Court of Australia against the orders made by the Full Court.

○ **Held:** allowing the appeal (by majority decision);

1. Section 36 of the Act provides for a class of visas to be known as "protection visas" and stipulates that a criterion for a protection visa is that the applicant be "a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol". Section 65 of the Act requires the Minister to grant a visa sought by a valid applicant "if satisfied" of various matters, including that any criteria for the visa prescribed by the Act are satisfied.

The principal ground of the application for review made to the Federal Court was as specified in s. 476(1)(e) of the Act:

“that the decision involved an error of law, being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the person who made the decision, whether or not the error appears on the record of the decision”.

The Tribunal had affirmed the decision not to grant Ibrahim a protection visa because it was not satisfied that the respondent possessed a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” if he should return to Somalia, the country of his nationality, as envisaged in Article 1A(2) of the Refugee Convention.

2. A similar question arose in the House of Lords case of *R. v. Secretary of State for Home Affairs, Ex parte Adan* [1999] 1 AC 293. There the Court had to consider whether a state of civil war with widespread clan and sub-clan based killing and torture can give rise to well-founded fear of persecution for the purposes of the Convention and the Protocol, notwithstanding that the individual claimant is at no greater risk of such adverse treatment than others who are at risk in the civil war for reasons of their clan and sub-clan membership. Their Lordships decided “that where a state of civil war exists, it is not enough for an asylum-seeker to show that he would be at risk if he were returned to his country. He must be able to show ... a differential impact. In other words, he must be able to show fear of persecution for Convention reasons over and above the ordinary risks of clan warfare”. In effect, the decision proceeded on the footing that the state of affairs in Somalia could be described as “a state of civil war” having particular incidents. However, the materials before the Tribunal in the present case concerning the situation in Somalia, particularly after the overthrow of President Barre’s regime in 1991, suggest that it is misleading to begin any inquiry respecting the operation of the Convention in relation to Somalia by use of the term “civil war”.

The Tribunal accepted that the Rahanwein clan, to which the respondent belongs, constitutes a particular social group for the purposes of the Convention definition and that his sub-clan, the Dabarre, constitutes a particular social group within the Rahanwein. The question the Tribunal posed was whether the “harm [the respondent]

faces amounts to persecution for reasons of membership of either of these groups”.

There was no dispute that between 1992 and 1995, when Ibrahim left Somalia, that country was “in a state of civil war”. However, he argued that the reference to “a course of systematic conduct” demonstrated that the Tribunal had erred in law in its interpretation of the term “persecution” in the Convention definition. The Federal Court rejected that submission, saying that there could be no quarrel with the use of the word “systematic” where, as in this case, the issue had been framed as whether the acts referred to were part of a systematic attack against the group to which the respondent belonged. This was a correct way of looking at the matter.

The Full Court on the other hand defined “systematic” as either deliberate or premeditated or intended conduct, of acting or carrying out actions with a premeditated intent, on the one hand or habitual behaviour according to a system, regular or methodical. “Where those words have been used to indicate the former sense, there will be no error of law. Where those words have been used to indicate a requirement that it is necessary to show a series of incidents or a course of conduct over time involving persecution, so that persecution will not be shown to exist if there is only an isolated incident, it will demonstrate an error of law on the part of the Tribunal.”

In the view of the Court, the following issues arose. “First, whether the notion of “civil war” has any normative force when construing and applying the Convention definition; secondly, whether the notions of “differential operation” propounded by the House of Lords in *Adan* should be adopted; thirdly, whether the gloss or qualification respecting “motivation” which the Full Court applied involves an error of law; fourthly, whether the Convention is premised upon State responsibility and the definition of “refugee” has to be understood in that light so that what might be called the Somali cases do not answer that definition; and, fifthly, whether Katz J or the Full Court was correct in their treatment of what was the second of the two errors of law found by the Full Court in the Tribunal’s reasons.”

3. In respect of the application of the term “systemic conduct”, the provisions of the Convention “assume a situation in which refugees, possibly by irregular means, have somehow managed to arrive at or in the territory of the contracting State”. The term “refugee” must be given its ordinary meaning bearing in mind the

object and purpose of the Convention This requires some appreciation of the factors underlying the signing of the Convention: Firstly, the right of asylum under customary international law is a right of states; no individual may assert a right to enter the territory of a state of which he/she is not a national. The state on the other hand may admit anyone even at the risk of inviting the displeasure of another state, including the grant of asylum. Secondly, Article 14 of the Universal Declaration of Human Rights 1948 provides that "everyone has the right to seek and to enjoy in other countries asylum from persecution". But this right "to seek" asylum was not accompanied by any assurance that the quest would be successful. A deliberate choice was made not to make a significant innovation in international law which would have amounted to a limitation upon the absolute right of member States to regulate immigration by conferring privileges upon individuals. Thirdly, the Convention was negotiated and agreed between States at a time when contracting states were in the midst of the cold war. Whereas most Western states wanted to reserve their resettlement capacity for those whose flight was motivated by pro-Western political values, the Soviets were anxious to refuse international protection to social and ideological emigrants for fear of exposing their weak flank, by bringing them within the scope of an internationally recognized refugee regime. A compromise was to restrict the scope of protection to only persons who feared 'persecution' in the sense of being denied basic civil and political rights.

Nevertheless it is generally accepted that the Convention definition, based on individual persecution, limits the humanitarian scope of the Convention. The definition does not encompass those fleeing generalised violence or internal turmoil or mass movements of persons fleeing civil war or other armed conflicts, military occupation, natural disasters and bad economic conditions. "No matter how devastating may be the epidemic, natural disaster or famine, a person fleeing them is not a refugee within the terms of the Convention. ...

It would therefore be wrong to depart from the demands of language and context by invoking the humanitarian objectives of the Convention without appreciating the limits which the Convention itself places on the achievement of them." Such persons are provided for in Australia under arrangements, not involving the issue of protection visas, but on special humanitarian

grounds, an example being, s. 37A and ss 91H-91L which provide for temporary safe haven visas.

4. On the issue of the "differential operation" and "motivation" stemming from the reasoning of the House of Lords in *Adan*, the question was whether a "state of civil war" could, in certain circumstances, "give rise to [a] well-founded fear of persecution" in the sense of the Convention definition. This assumed that conditions in Somalia answered the description of a state of civil war. The widespread disorder existing in Somalia cannot be described as a "civil war" in the proper sense of the term. To proceed as was done in *Adan* involves a risk that there will be a blurring of the distinction between the persecutory acts which the asylum seeker must show and the broader circumstances leading to those acts.

The notions of "civil war", "differential operation" and "object" or "motivation" of that "civil war" are distractions from applying the text of the Convention definition. In so far as *Adan* and the decision of the Full Court in *Abdi* and the present case expound or apply them, those decisions should not be followed.

5. The task of the Tribunal was to determine "whether the particular experiences of the [respondent] were caused by persecution for Convention reasons, and in the light of those findings [to consider] whether at the time of the determination of the application there was a real chance (as that term has been explained in *Chan*) of the [respondent] being persecuted by reason of his membership of the Rahanwein clan if he were to return to Somalia".

The respondent had presented his case for an affirmative answer to that question on two bases. Only the first remained a live issue in the Full Court. This involved the complaint that the experiences of the respondent indicated a course of systematic conduct aimed at members of his clan or sub-clan for reasons of their membership thereof. The conclusion reached by the Tribunal was well restated by Katz J when his Honour said:

"The Tribunal did accept that the Rahanwein clan and its Dabarre sub clan were each a 'particular social group' for relevant purposes. However, contrary to [the respondent's] case, the Tribunal concluded that it was not satisfied that the particular events to which he had referred had amounted to persecution of persons, including himself, for reasons of their membership of either the Rahanwein clan or its Dabarre sub clan. The references to "civil war" or "civil conflict" in the

Tribunal's reasoning were only to state, correctly in the opinion of the Court, that "the fact that a civil conflict is clan-based does not of itself make its victims the victims of persecution for reasons of membership of a particular social group". That is, they show a cognizance that such terms raise tangential issues and reinforce the conclusion that the Tribunal did not allow them to distract it from the task of applying the Convention definition. In effect, references to a "course of systematic conduct" arose only because of the manner in which the issue was framed before the Tribunal and not because of some misunderstanding on the Tribunal's part imported by the terms "civil war" or "civil conflict".

*Minister for Immigration and Multicultural Affairs v. Ibrahim* [2000] 74 ALJR 11556

### **Asylum – refusal of application for refugee status – Fear of persecution and not prosecution was the requirement under the Refugee Convention – (UK – Scotland)**

A was a Pakistani Sunni Muslim, who was wanted in connection with the shooting of Shia Muslims in his home country. There was a warrant out for his arrest. He applied for asylum in Scotland and was refused and directions for his removal were issued. He appealed to the special adjudicator who rejected his appeal. The Immigrations Appeal Tribunal also refused him leave to appeal further. A then sought reductions of the decisions of the Special Adjudicator and the Tribunal. He argued that the Special Adjudicator had failed to take account of the whole circumstances of his application. He said that the shootings had happened within the context of a political dispute between religious factions and he had been tortured at some time when he was arrested for political activities. The warrant for his arrest had

been issued following an accusation by a political opponent. The Adjudicator had not given any reasons for concluding that there was a reasonable likelihood that A was wanted as a genuine suspect for prosecution. The test he used in coming to the conclusion that A had failed to establish a reasonable likelihood of persecution for convention reasons was distorted and should be set aside.

➤ **Held:** dismissing the petition;

1. The adjudicator was justified in holding that there was a reasonable likelihood that the warrant for A's arrest was not politically motivated, but that A was a genuine suspect having regard to the circumstances of the murders. Besides, the other occasions when A was detained were in connection with specific incidents where the police had to enforce the law and not on the basis of political motivation.

2. The Adjudicator could also rightly hold that A was in fear of prosecution and not persecution and thus, he did not qualify as a refugee under the Convention. A's innocence or otherwise was better determined by the Courts in Pakistan. Although A may be in genuine fear of police brutality, such fear did not amount to persecution per se under the Convention.

*Ali (Liaqat) v. Secretary of State for the Home Department* [2000] S.C.L.R. 783

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